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Investing in America

Business and Industry Loan Guarantee Program

U.S. Department of Agriculture
Rural Development
Rural Business-Cooperative Service

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**U. S. DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT STATE OFFICES**

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NEW JERSEY USDA Rural Development State Office Tarnsfield Plaza, Suite 22 790 Woodlane Road Mt. Holly, NJ 08060 T: (609) 265-3600 F: (609) 265-3651	PENNSYLVANIA USDA Rural Development State Office 1 Credit Union Place, Suite 330 Harrisburg, PA 17110-2996 T: (717) 237-2299 F: (717) 237-2191	VIRGINIA USDA Rural Development State Office Culpeper Building, Suite 238 1606 Santa Rosa Road Richmond, VA 23229 T: (804) 287-1550 F: (804) 287-1721
NEW MEXICO USDA Rural Development State Office 6200 Jefferson Street, Room 255 Albuquerque, NM 87109 T: (505) 761-4950 F: (505) 761-4976	PUERTO RICO USDA Rural Development State Office New San Juan Office Building, Rm. 501 159 Carlos E. Chardon Street Hato Rey, PR 00918-5481 T: (787) 766-5095 F: (787) 766-5844	WASHINGTON USDA Rural Development State Office 1835 Blacklake Boulevard, SW., Suite B Olympia, WA 98512-5715 T: (360) 704-7700 F: (360) 704-7742
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NORTH CAROLINA USDA Rural Development State Office 4405 Bland Road, Suite 260 Raleigh, NC 27609 T: (919) 873-2000 F: (919) 873-2075	SOUTH DAKOTA USDA Rural Development State Office Federal Building, Room 210 200 4th Street SW Huron, SD 57350 T: (605) 352-1100 F: (605) 352-1146	WISCONSIN USDA Rural Development State Office 4949 Kirschling Court Stevens Point, WI 54481 T: (715) 345-7600 F: (715) 345-7669
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OHIO USDA Rural Development State Office Federal Building, Room 507 200 North High Street Columbus, OH 43215 T: (614) 469-5606 F: (614) 469-5802	TEXAS USDA Rural Development State Office 101 South Main, Suite 102 Temple, TX 76501 T: (254) 742-9700 F: (254) 742-9709	

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RURAL DEVELOPMENT STATE OFFICES**

ALABAMA USDA Rural Development State Office Sterling Centre, Suite 601 4121 Carmichael Road Montgomery, AL 36106-3683 T: (334) 279-3400 F: (334) 279-3484	GEORGIA USDA Rural Development State Office Stephens Federal Building 355 E. Hancock Avenue Athens, GA 30601 T: (706) 546-2162 F: (706) 546-2152	LOUISIANA USDA Rural Development State Office 3727 Government Street Alexandria, LA 71302 T: (318) 473-7920 F: (318) 473-7829
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ARKANSAS USDA Rural Development State Office 700 West Capitol Ave. Rm. 5411 Little Rock, AR 72201-3225 T: (501) 324-6281 F: (501) 324-6346	ILLINOIS USDA Rural Development State Office Illini Plaza, Suite 103 1817 South Neil Street Champaign, IL 61820 T: (217) 398-5235 F: (217) 398-5337	MICHIGAN USDA Rural Development State Office 3001 Coolidge Road, Suite 200 East Lansing, MI 48823 T: (517) 337-6635 F: (517) 337-6913
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DELAWARE-MARYLAND USDA Rural Development State Office 5201 South Dupont Hwy P.O. Box 400 Camden, DE 19934-9998 T: (302) 697-4300 F: (302) 697-4390	KANSAS USDA Rural Development State Office 1200 SW Executive Drive P.O. Box 4653 Topeka, KS 66604 T: (913) 271-2700 F: (913) 271-2708	MISSOURI USDA Rural Development State Office 601 Business Loop 70 West Parkade Center, Suite 235 Columbia, MO 65203 T: (573) 876-0976 F: (573) 876-0977
FLORIDA USDA Rural Development State Office 4440 NW 25th Place P.O. Box 147010 Gainesville, FL 32614-7010 T: (352) 338-3400 F: (352) 338-3405	KENTUCKY USDA Rural Development State Office 771 Corporate Drive, Suite 200 Lexington, KY 40503 T: (606) 224-7300 F: (606) 224-7340	MONTANA USDA Rural Development State Office Unit 1, Suite B 900 Technology Boulevard Bozeman, MT 59715 T: (406) 585-2580 F: (406) 585-2565



Rural Business- Cooperative Service



A Commitment to Service

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Business and Industry
Loan Guarantee Program



United States Department of Agriculture

Mission

*RBS enhances
the ability of rural
people to create, build,
and sustain ventures
and communities.
We do this
through partnerships
and by investing
financial and technical
resources in areas
of greatest need through
activities
of greatest potential.*

A Commitment To Service

The Rural Business-Cooperative Service (RBS), an agency within the Rural Development mission area, is striving to provide our customers with the best service possible. We are pursuing this in different ways including working with national, State, and local associations and other interested stakeholders. This brochure outlines RBS standards for processing Business and Industry (B&I) Loan Guarantee Program applications. These standards are a product of the continuing dialogue between RBS, borrowers, and related organizations.

The vision for the USDA Rural Development mission area emphasizes promoting sustainable communities in rural America where all people can live, work, and prosper.

Toward this end, RBS is committed to:

- Providing prompt, courteous service.
- Delivering service fairly and impartially.
- Responding accurately, clearly, and promptly to your requests for information, guidance, and assistance.

If you have any questions, comments, or suggestions, please contact your Rural Development State Office.

Purpose

RBS focuses resources to help improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through guaranteeing loans for projects which will provide lasting community benefits.

RBS is making a concerted effort to improve customer service. We have reduced unnecessary paperwork and given RBS field staff more authority and flexibility to manage our loan program. We have rewritten our program regulations to eliminate unnecessary or burdensome provisions. We have streamlined regulations to make the program less complicated and more user-friendly, and automated application forms to provide more efficient, effective service to customers.

RBS has also updated and revised the B&I factsheet to keep potential customers and the public aware of our program. A B&I video has been developed and distributed to all Rural Development State Offices in an effort to inform a wide variety of organizations and groups about the B&I program. Rural Development State Directors (formerly Farmers Home Administration State Directors) are responsible for providing local Federal leadership and overseeing Rural Development field offices in the administration of the B&I program.

Customer Service Standards

Rural Development State Office staff is normally the initial point of contact for the B&I program. The staff will:

- Provide you with the necessary information, advice, and guidance about using the B&I program.
- Refer you to other sources of assistance or credit if it appears that you may qualify for alternative sources of funding from commercial, private, or other governmental sources.
- Provide you with appropriate forms and materials within 7 working days when you notify an Rural Development State Office that you are interested in filing a request for financial assistance.
- Answer phone calls promptly.
- Conduct a review of your loan application to verify completeness and compliance with applicable requirements within 10 working days after receiving the application.
- Discuss all issues concerning your application with you and the lender within 5 working days after completion of our review.
- Forward all appropriate documents to the National Office within 7 working days of loan review completion.
- Issue the guarantee for your loan within 2 working days from the time the lending institution holds the final loan closing.

What Our Customers Can Expect

When you contact us, we will be:

- Courteous and respect your privacy.
- Polite, responsive, and assist you with a staff knowledgeable of the B&I program.
- Fair to all people regardless of race, sex, disability, religion, age, or any other factor.
- Clear, explaining to you what we do, how our program works, and how we can assist you.
- Willing to work with you and, if necessary, to cooperate with other Federal, State, and local agencies to meet your needs.
- Efficient and effective in providing assistance.
- Open and work with you and seek your views, listen to your needs, and make modifications, if possible, in accordance with RBS policies and regulations.

If you are not satisfied with any aspect of our service, please tell us so we can correct the problem. If we make a mistake, we will tell you and correct it.

How To Contact RBS

The RBS B&I program is administered at the State level by Rural Development field offices. Detailed information and applications are available through Rural Development State Offices. These offices were previously known as Farmers Home Administration offices.

If you want to share your views with RBS, if our service has not met your expectations, or if you need further assistance, please let us know.

Write to your Rural Development State Office or to:

Administrator
Rural Business-Cooperative Service
U.S. Department of Agriculture
14th and Independence Avenue, SW
Washington, DC 20250-3200

Give us a call. Consult your phone directory for a Rural Development State Office near you or call the RBS Washington Office at 202-690-4730 (FAX 202-690-0097).

PART 4279 - GUARANTEED LOANMAKING

Subpart A - General

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PART 4279 - GUARANTEED LOANMAKING

Subpart A - General

§ 4279.1 Purpose.

(a) This subpart contains general regulations for making and servicing Business and Industry (B&I) loans guaranteed by the Agency and applies to lenders, holders, borrowers and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) It is the responsibility of the lender to ascertain that all requirements for making, securing, servicing, and collecting the loan are complied with.

(c) Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office. Any portion of this Instruction appearing in italicized type is considered by the Agency to be administrative procedure and has not been published as part of the regulation in the Federal Register.

§ 4279.2 Definitions and abbreviations

(a) Definitions.

Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the B&I program. References to the National Office, Finance Office, State Office or other Agency offices or officials should be read as prefaced by "Agency" or "Rural Development" as applicable.

Arm's-length transaction The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able disinterested third party that is not affiliated with or related to and has no security, monetary or stockholder interest in the borrower or transferor at the time of the transaction.

Assignment Guarantee Agreement (Business and Industry) Form 4279-6, the signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

Borrower. All parties liable for the loan except for guarantors.

Conditional Commitment (Business and Industry) Form 4279-3, the Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency.

Deficiency balance The balance remaining on a loan after all collateral has been liquidated.

Deficiency judgment A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Existing lender debt A debt not guaranteed by the Agency, but owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Fair market value The price that could reasonably be expected for an asset in an arm's-length transaction between a willing buyer and a willing seller under ordinary economic and business conditions.

Farmers Home Administration (FmHA) The former agency of the United States Department of Agriculture (USDA) that previously administered the programs of this Agency. Many Instructions and forms of FmHA are still applicable to Agency programs.

Finance Office The office which maintains the Agency financial accounting records located in St. Louis, Missouri.

High-impact business A business that offers specialized products and services that permit high prices for the products produced, may have a strong presence in international market sales, may provide a market for existing local business products and services, and which is locally owned and managed.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through use of Form 4279-6 or predecessor form.

Interim Financing A temporary or short-term loan made with the clear intent that it will be repaid through another loan. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

§ 4279.2 (Con.)

Lender. The organization making, servicing, and collecting the loan which is guaranteed under the provisions of the appropriate subpart.

Lender's Agreement (Business and Industry) Form 4279-4 or predecessor form, between the Agency and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee is issued.

Loan Agreement The agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender.

Loan Note Guarantee (Business and Industry) Form 4279-5 or predecessor form, issued and executed by the Agency containing the terms and conditions of the guarantee.

Loan-to-value The ratio of the dollar amount of a loan to the dollar value of the collateral pledged as security for the loan.

Natural resource value-added product Any naturally occurring product that is processed to add value to the product. For example, straw is processed into particle board.

Negligent Servicing The failure to perform those services which a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender will be affected on apro rata basis.

Participation Sale of an interest in a loan by the lender wherein the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Poor. A community or area is considered poor if, based on the most recent decennial census data, either the county, city, or census tract where the community or area is located has a median household income at or below the poverty line for a family of four; has a median household income below the nonmetropolitan median household income for the State; or has a population of which 25 percent or more have income at or below the poverty line.

Promissory Note Evidence of debt. "Note" or "Promissory Note" shall also be construed to include "Bond" or other evidence of debt where appropriate.

Rural Development The Under Secretary for Rural Development has policy and operational oversight responsibilities for RHS, RBS, and RUS.

Spreadsheet A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheet items and income statements and may include funds flow statement data and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordination An agreement between the lender and borrower whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to, or on parity with, the lien position of another loan in order for the Agency borrower to obtain additional financing, not guaranteed by the Agency, from the lender or a third party.

Veteran. For the purposes of assigning priority points, a veteran is a person who is a veteran of any war, as defined in § 101(12) of title 38, United States Code.

(b) **Abbreviations**

B&I - Business and Industry
CF - Community Facilities
CLP - Certified Lender Program
FSA - Farm Service Agency
FMI - Forms Manual Insert
OGC - Office of the General Counsel
NAD - National Appeals Division
RBS - Rural Business-Cooperative Service
RHS - Rural Housing Service
RUS - Rural Utilities Service
SBA - Small Business Administration
USDA - United States Department of Agriculture

§ 4279.15 Exception authority

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law provided, the Administrator determines that application of the requirement or provision would adversely affect USDA's interest. Requests for exceptions must be in writing by the State Director. Requests must be supported with documentation to explain the adverse effect on the Agency's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 4279.16 Appeals.

Only the borrower, lender, or holder can appeal an Agency decision made under this subpart. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with 7 CFR, part 11. Any party adversely affected by an Agency decision under this subpart may request a determination of appealability from the Director, National Appeals Division, USDA, within 30 days of the adverse decision.

§§ 4279.17 - 4279.28 [Reserved]

§ 4279.29 Eligible lenders

(a) Traditional lenders An eligible lender is any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, or mortgage company, that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include credit unions provided, they are subject to credit examination and supervision by either the National Credit Union Administration or a State agency, and insurance companies provided they are regulated by a State or National insurance regulatory agency. Eligible lenders include the National Rural Utilities Cooperative Finance Corporation.

(b) Other lenders Rural Utilities Service borrowers and other lenders not meeting the criteria of paragraph (a) of this section may be considered by the Agency for eligibility to become a guaranteed lender provided, the Agency determines that they have the legal authority to operate a lending program and sufficient lending expertise and financial strength to operate a successful lending program.

(1) Such a lender must:

(i) Have a record of successfully making at least three commercial loans annually for at least the most recent 3 years, with delinquent loans not exceeding 10 percent of loans outstanding and historic losses not exceeding 10 percent of dollars loaned, or when the proposed lender can demonstrate that it has personnel with equivalent previous experience and where the commercial loan portfolio was of a similar quantity and quality; and

(ii) Have tangible balance sheet equity of at least seven percent of tangible assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first 6 months of being approved as a guaranteed lender.

(2) A lender not eligible under paragraph (a) of this section that wishes consideration to become a guaranteed lender must submit a request in writing to the State Office for the State where the lender's lending and servicing activity takes place. The State Office will review the request and forward the request, with the State Director's recommendations, to the National Office for consideration. The National Office will make such investigation as it deems necessary and will notify the prospective lender, through the State Director, whether the lender's request for eligibility is approved or rejected. If rejected, the reasons for the rejection will be indicated to the prospective lender in writing. The lender's written request must include:

(i) Evidence showing that the lender has the necessary capital and resources to successfully meet its responsibilities.

(ii) Copy of any license, charter, or other evidence of authority to engage in the proposed loanmaking and servicing activities. If licensing by the State is not required, an attorney's opinion to this effect must be submitted.

(iii) Information on lending experience, including length of time in the lending business; range and volume of lending and servicing activity; status of loan portfolio including delinquency rate, loss rate as a percentage of loan amounts, and other measures of success; experience of management and loan officers; audited financial statements not more than 1 year old; sources of funds for the proposed loans; office location and proposed lending area; and proposed rates and fees, including loan origination, loan preparation, and

~~§ 4279(b) (2) (iii) (Cm.)~~

servicing fees. Such fees must not be greater than those charged by similarly located commercial lenders in the ordinary course of business.

(iv) An estimate of the number and size of guaranteed loan applications the lender will develop.

(c) Expertise. Loan guarantees will only be approved for lenders with adequate experience and expertise to make, secure, service, and collect B&I loans.

§ 4279.30 Lenders' functions and responsibilities

(a) General.

(1) Lenders have the primary responsibility for the successful delivery of the B&I loan program. In your initial contact with lending officers, make sure that they are well aware of this responsibility and the fact that the Agency will enforce the requirements of the Conditional Commitment and the Lender's Agreement in this regard. All lenders obtaining or requesting a B&I loan guarantee are responsible for:

- (i) Processing applications for guaranteed loans,
- (ii) Developing and maintaining adequately documented loan files,
- (iii) Recommending only loan proposals that are eligible and financially feasible,
- (iv) Obtaining valid evidence of debt and collateral in accordance with sound lending practices,
- (v) Supervising construction,
- (vi) Distribution of loan funds,
- (vii) Servicing guaranteed loans in a prudent manner, including liquidation if necessary,
- (viii) Following Agency regulations, and
- (ix) Obtaining Agency approvals or concurrence as required.

§ 4279.30(a) (Con.)

(2) This subpart, along with subpart B of this part and subpart B of part 4287, contain the regulations for this program, including the lenders' responsibilities.

(b) Credit evaluation This is a key function of all lenders during the loan processing phase. The lender must analyze all credit factors associated with each proposed loan and apply its professional judgment to determine that the credit factors, considered in combination, ensure loan repayment. The lender must have an adequate underwriting process to ensure that loans are reviewed by other than the originating officer. There must be good credit documentation procedures.

(c) Environmental responsibilities Lenders have a responsibility to become familiar with Federal environmental requirements; to consider, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lenders must help the borrower prepare Form RD 1940-20, "Request for Environmental Information" (when required by subpart G of part 1940); assist in the collection of additional data when the Agency needs such data to complete its environmental review of the proposal; and assist in the resolution of environmental problems. Technical advice and information on environmental requirements, including copies of RD Instruction 1940-G and the State's Natural Resource Management Guide, are available from the State Environmental Coordinator.

(d) Loan closing The lender will conduct loan closings. No prior or postreview by the Agency is required by this Instruction.

§§ 4279.31 - 4279.42 [Reserved]

§ 4279.43 Certified Lender Program

(a) General. This section provides policies and procedures for the Certified Lender Program (CLP) for loans guaranteed under this part. The objectives are to expedite loan approval, making, and servicing.

(b) CLP eligibility criteria The lender must meet established eligibility criteria as follows:

(1) Be an "eligible lender" as defined in § 4279.29 of this subpart and authorized to do business in the State in which CLP status is desired.

§ 4279.43(b) (Con.)

(2) Demonstrate to the Agency's satisfaction that it has a thorough knowledge of commercial lending. The lender will demonstrate such knowledge by providing a summary of its guaranteed and unguaranteed business lending activity. At a minimum, the summary must include the dollar amount and number of loans in the lender's portfolio, unguaranteed and guaranteed by any Federal agency, with information on delinquencies and losses and, if applicable, the performance of the lender as a Small Business Administration (SBA) certified or preferred lender. A certified lender must be recognized throughout the State as a commercial lender and have a track record of successfully making at least five commercial loans per year for at least the most recent 5 years, with delinquent commercial loans outstanding not exceeding 6 percent of commercial loans outstanding and historic losses not exceeding 6 percent of dollars loaned or it must demonstrate that it has personnel with equivalent previous experience where the commercial loan portfolio was of a similar quantity and quality. The lender will provide a written certification to this effect along with a statistical analysis of its commercial loan portfolio for the last 3 of its fiscal years.

(3) The percentage of guarantee will not exceed 80 percent.

(4) If the lender is a bank or savings and loan, it must have a financial strength rating in the upper half of possible ratings as reported by a lender rating service selected by the Agency.

(5) Possess loan officers and other appropriate personnel who have received training conducted by the Agency. Additional training may be required if the lender's contact person changes or if the Agency determines further instruction is needed.

(6) Have committed no action within the most recent 2 years prior to requesting CLP status which would be considered cause for revoking CLP status under paragraph (e) of this section.

(c) CLP approval The Agency may grant CLP status for a period not to exceed 5 years by executing Form 4279-8, "Certified Lender (Business and Industry Program)," with the lender. CLP status will not apply to branches or suboffices of the lender unless so specified in the agreement. Such branches or suboffices may submit loans as regular lenders or apply for their own CLP status.

(1) Lender responsibilities. Any lender who desires CLP status must prepare a written request to the State Director where it desires CLP status. The request must address each of the required criteria outlined in paragraph (b) of this section, except for paragraph (b) (3), and should be accompanied by any other information the lender believes will be helpful. The request will also include Form 4279-8 completed and executed by the lender and an executed Lender's Agreement if it does not already have a valid Lender's Agreement on file with the Agency. Loans made by the lender and guaranteed by the Agency prior to the lender receiving CLP status shall continue to be governed by the forms and agreements executed between the lender and the Agency for those loans.

(2) Agency responsibilities. Any Rural Development office will provide a copy of subparts A and B of this part and subpart B of part 4287 to any lender that desires CLP status. The State Director will determine whether the lender meets the required criteria and will notify the lender in writing within 30 days of receipt that the request is approved, reasons for denial, or any conditions the lender must meet for approval. Lenders whose requests are denied will be advised of their appeal rights in accordance with Departmental appeal regulations.

(d) Renewal of CLP status Renewal of CLP status is not automatic. CLP status will lapse upon the expiration date of Form 4279-8 unless the lender obtains a renewal. A lender whose CLP status has lapsed may continue to submit loan guarantee requests as a regular lender.

(1) Lender responsibilities. A new Form 4279-8 completed and executed by the lender must be provided, along with a written update of the eligibility criteria required by this section for CLP approval. This information must be supplied at least 60 days prior to the expiration of the existing agreement to be assured of uninterrupted status. The information must address how the lender is complying with each of the required criteria described in paragraph (b) of this section. It must include any proposed changes in the designated persons for processing guaranteed loans or operating methods used in processing and servicing Agency guaranteed loans.

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(2) Agency responsibilities Upon receipt of a lender's renewal request, the State Director should, within 15 days, request from the lender any additional information needed to process a renewal request. A review of the lender's CLP performance will be completed to determine whether the lender has continually met the eligibility criteria described in paragraph (b) of this section. Any action by the lender since it was designated a CLP lender that could be cause for revoking its CLP status, in accordance with paragraph (e) of this section, will also be considered cause for denying the renewal of CLP status. The State Director should notify the lender in writing within 30 days of receipt of a request for renewal that the request is approved, reasons for denial, or any conditions the lender must meet for approval. Lenders will be advised of their appeal rights in accordance with Departmental appeal regulations.

(e) Revocation of CLP status The lender's CLP status may be revoked at any time for cause. The debarment of a lender is an additional alternative the Agency may consider. A lender which has lost its CLP status, but has not been debarred and still meets the requirements of § 4279.29 of this subpart may continue to submit loan guarantee requests as a regular lender. Cause for revoking CLP status includes:

- (1) Failure to maintain status as an eligible lender as set forth in § 4279.29 of this subpart;
- (2) Knowingly submitting false information when requesting a guarantee or basing a guarantee request on information known to be false or which the lender should have known to be false;
- (3) Making a guaranteed loan with deficiencies which may cause losses not to be covered by the Loan Note Guarantee;
- (4) Conviction for acts in connection with any loan transaction whether or not the loan was guaranteed by the Agency;
- (5) Violation of usury laws in connection with any loan guaranteed by the Agency;
- (6) Failure to obtain the required security for any loan guaranteed by the Agency;
- (7) Using loan funds guaranteed by the Agency for purposes other than those specifically approved by the Agency in the Conditional Commitment;

- (8) Violation of any term of the Lender's Agreement;
- (9) Failure to correct any cited deficiency in loan documents in a timely manner;
- (10) Failure to submit reports required by the Agency in a timely manner;
- (11) Failure to process Agency guaranteed loans in a reasonably prudent manner;
- (12) Failure to provide for adequate construction planning and monitoring in connection with any loan to ensure that the project will be completed with the available funds and, once completed, will be suitable for the borrower's needs;
- (13) Repetitive recommendations for guaranteed loans with marginal or substandard credit quality or that do not comply with Agency requirements;
- (14) Repetitive recommendations for servicing actions that do not comply with Agency requirements;
- (15) Negligent servicing; or
- (16) Failure to conduct any approved liquidation of a loan guaranteed by the Agency or its predecessors in a timely and effective manner and in accordance with the approved liquidation plan.

(f) General loan processing and servicing guidelines All requests for guaranteed loans will be processed and serviced under subparts A and B of this part and subpart B of part 4287, except as modified by this section. When determining whether or not to request a guarantee for a proposed loan, lenders must consider the priorities set forth in § 4279.155 of subpart B of this part.

- (1) Prior to processing an application, the CLP lender may give written notice to the State Director of its intention to submit an application. Upon receipt of such written notice, the Agency will notify the CLP lender whether or not there is sufficient guarantee authority for the loan. Such guarantee authority will be held for 30 days pending receipt of the application. If a complete

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application for which guarantee authority is being held is not received within 30 days of the notice of intent to file or is rejected, the guarantee authority for this application will no longer be held in reserve. Notwithstanding the preceding, no guarantee authority will be held in reserve the last 60 days of the Agency's fiscal year.

(2) Refinancing of existing lender debt in accordance with § 4279.113(q) of subpart B of this part will not be permitted without prior Agency approval.

(3) CLP lenders will process all guaranteed loans as a "complete application" by obtaining and completing all items required by § 4279.161(b) of subpart B of this part. The CLP lender must maintain all information required by § 4279.161(b) in its loan file and determine that such material complies with all requirements.

(4) CLP lenders will make all material relating to any guarantee application available to the Agency upon request.

(5) At the time of the Agency's issuance of the Loan Note Guarantee, the CLP lender will provide the Agency with copies of the following documents:

(i) Executed Loan Agreement;

(ii) Executed Promissory Notes; and

(iii) Executed security documents including personal and corporate guarantees.

(g) Unique characteristics of the CLP A proposed loan by a CLP lender requires a review by the Agency of the information submitted by the lender, plus satisfactory completion of the environmental review process by the Agency. The Agency may rely on the lender's credit analysis.

(1) The following will constitute a complete application submitted by a CLP lender:

(i) Form 4279-1, "Application for Loan Guarantee (Business and Industry)," (marked with the letters "CLP" at the top) completed in its entirety and executed by the borrower and CLP lender;

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(ii) Copy of the proposed Loan Agreement or a list of proposed requirements;

(iii) Form RD 1940-20, completed and signed, with attachments;

(iv) The lender's complete written analysis of the proposal, including spreadsheets of the balance sheets and income statements for the 3 previous years (for existing businesses), pro forma balance sheet at startup, and 2 years projected year-end balance sheets and income statements, with appropriate ratios and comparisons with industry standards (such as Dun & Bradstreet or Robert Morris Associates). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales. The lender's credit analysis must include the borrower's management, repayment ability including a cash flow analysis, history of debt repayment, necessity of any debt refinancing, and the credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary;

(v) Intergovernmental consultation comments in accordance with RD Instruction 1940-J and 7 CFR part 3015, subpart V; and

(vi) If the loan will exceed \$1 million and will increase direct employment by more than 50 employees, Form 4279-2, "Certification of Non-Relocation and Market Capacity Information Report," must be completed by the lender. For such loans, the Agency will submit Form 4279-2 to the Department of Labor and obtain clearance before a Conditional Commitment may be issued.

(2) The Agency will make the final credit decision based primarily on a review of the credit analysis submitted by the lender and approval of the Agency's completed environmental analysis if required, except that refinancing of existing lender debt in accordance with § 4279.113(q) of subpart B of this part will not be approved without a credit analysis by the Agency of the borrower's complete financial statements and completion by the Agency of the environmental analysis. The Agency may request such additional information as it determines is needed to make a decision. Requests for information in addition to that required by paragraph (g) (1) of this section shall be made only in situations when such information is necessary for the Agency to reach the determinations required by this paragraph or when information is needed for the Agency to complete its environmental review. It will not be necessary for the Agency to complete the project summary portion of Form 4279-1.

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(3) The Agency will complete the appropriate level of environmental review in accordance with subpart G of part 1940 prior to the issuance of the Conditional Commitment, loan approval, or obligation of funds, whichever occurs first.

(4) Except as provided for in paragraph (g) (1) (vi) of this section and subject to satisfactory completion of the environmental review process as provided for in paragraph (g) (3) of this section, the Agency will normally approve or disapprove complete applications submitted by CLP lenders in accordance with paragraph (g) (1) of this section within 60 days. Proposals which are environmentally complex or controversial may require more than 60 days for satisfactory completion of the environmental review process.

(5) The Agency will not issue the Loan Note Guarantee until all conditions of § 4279.181 of subpart B of this part are satisfied

(h) Lender loan servicing responsibilities CLP lenders will be fully responsible for all aspects of loan servicing and, if necessary, liquidation as described in subpart B of part 4287 of this chapter.

(i) The Agency's monitoring of CLP status The State Director is responsible for the following CLP management activities:

(1) Establishing an operational file for each CLP lender in the State, which includes the Lender's Agreement, documentation of the results of reviews of the lender's performance, and any other information relative to the lender's CLP activity in the State.

(2) Monitoring CLP lenders' loanmaking and servicing activities to determine compliance with the Lender's Agreement and applicable regulations. This will be accomplished in part by meeting at least annually with each CLP lender in accordance with § 4287.106(c) of subpart B of part 4287.

(3) Taking appropriate action against a lender, including revoking its CLP status for the reasons specified in paragraph (e) of this section and initiation of suspension or debarment action in accordance with subpart M of part 1940. The lender must be notified, in writing, of any such action taken.

(4) Advising the Director, Business Programs Processing Division, National Office, of CLP lender performance deficiencies upon discovery of significant deficiencies. The State Director will notify the Director of the Processing Division if any significant deficiencies are found in the operations of a CLP lender.

§ 4279.44 Access to records

The lender will permit representatives of the Agency (or other agencies of the United States) to inspect and make copies of any records of the lender pertaining to the Agency guaranteed loans during regular office hours of the lender or at any other time upon agreement between the lender and the Agency.

§§ 4279.45 - 4279.57 [Reserved]

§ 4279.58 Equal Credit Opportunity Act

In accordance with title V of Pub. L. 93-495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor the Agency will discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status or age (providing the applicant has the capacity to contract), or because all or part of the applicant's income derives from a public assistance program, or because the applicant has, in good faith, exercised any right under the Consumer Protection Act. The lender will comply with the requirements of the Equal Credit Opportunity Act as contained in the Federal Reserve Board's Regulation implementing that Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

§ 4279.59 Environmental requirements

The Agency is responsible for ensuring that the requirements of the National Environmental Policy Act of 1969 are met and will complete the appropriate level of environmental review in accordance with subpart G of part 1940. Technical advice and guidance is offered through the State Environmental Coordinator and should be obtained as necessary to ensure compliance with mentioned regulations. Since development of the loan application occurs simultaneously with development of the environmental review, applicants, including lenders and borrowers, must be advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered in the environmental review or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process must occur prior to the issuance of the Conditional Commitment, loan approval, or obligation of funds, whichever occurs first.

§ 4279.60 Civil Rights Impact Analysis

The Agency is responsible for ensuring that all requirements of RD Instruction 2006-P, "Civil Rights Impact Analysis" are met and will complete the appropriate level of review in accordance with that Instruction. Satisfactory completion of this analysis process must occur prior to the issuance of the Conditional Commitment, loan approval, or obligation of funds, whichever occurs first. Technical advice and guidance is offered through the National Office Civil Rights Staff and should be obtained as necessary to ensure compliance with mentioned regulations.

§§ 4279.61 - 4279.70 [Reserved]

§ 4279.71 Public bodies and nonprofit corporations

Any public body or nonprofit corporation that receives a guaranteed loan that meets the thresholds established by OMB Circulars A-128 or A-133 or successor regulations or circulars must provide an audit in accordance with the applicable circular or regulation for the fiscal year (of the borrower) in which the Loan Note Guarantee is issued. If the loan is for development or purchases made in a previous fiscal year through interim financing, an audit will also be provided for the fiscal year in which the development or purchases occurred. Any audit provided by a public body or nonprofit corporation in compliance with OMB Circulars A-128 or A-133 or their successors will be considered adequate to meet the audit requirements of the B&I program for that year.

§ 4279.72 Conditions of guarantee

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will execute a Lender's Agreement. If a valid Lender's Agreement already exists, it is not necessary to execute a new Lender's Agreement with each loan guarantee. Original Lender's Agreements should be maintained in an operational file in a fire-resistant cabinet. Each case file should contain a copy of the applicable Lender's Agreement. The provisions of this part and part 4287 will apply to all outstanding guarantees. In the event of a conflict between the guarantee documents and these regulations as they exist at the time the documents are executed, the regulations will control.

(a) Full faith and credit A guarantee under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder or which a lender or holder participates in or condones. The guarantee will be unenforceable to the extent that any loss is occasioned by a provision for interest on interest. In addition, the guarantee will be unenforceable by the lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge thereof. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment. The Agency will guarantee payment as follows:

(1) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the loan and on interest due on such portion.

(2) To the lender, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal and interest evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest due thereon.

(b) Rights and liabilities When a guaranteed portion of a loan is sold to a holder, the holder shall succeed to all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound to all obligations under the Loan Note Guarantee, Lender's Agreement, and the Agency program regulations. A guarantee and right to require purchase will be directly enforceable by a holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones. In the event of material fraud, negligence or misrepresentation by the lender or the lender's participation in or condoning of such material fraud, negligence or misrepresentation, the lender will be liable for payments made by the Agency to any holder.

§ 4279.72 (Con.)

(c) Payments. A lender will receive all payments of principal and interest on account of the entire loan and will promptly remit to the holder its pro rata share thereof, determined according to its respective interest in the loan, less only the lender's servicing fee.

§§ 4279.73 - 4279.74 [Reserved]

§ 4279.75 Sale or assignment of guaranteed loan

The lender may sell all or part of the guaranteed portion of the loan on the secondary market or retain the entire loan. The lender shall not sell or participate any amount of the guaranteed or unguaranteed portion of the loan to the borrower or members of the borrower's immediate families, officers, directors, stockholders, other owners, or a parent, subsidiary or affiliate. If the lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default. Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. § 103 (interest on State and local banks) or any successor section, will not be guaranteed. Options for sale and structure of the loan are outlined in appendix B of subpart B of this part.

(a) Single note system The entire loan is evidenced by one note, and one Loan Note Guarantee is issued. The lender may assign all or part of the guaranteed portion of the loan to one or more holders by using the Agency's Assignment Guarantee Agreement. The holder, upon written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan sold under the Assignment Guarantee Agreement. Upon notification and completion of the assignment through the use of Form 4279-6, the assignee shall succeed to all rights and obligations of the holder thereunder. If this option is selected, the lender may not at a later date cause any additional notes to be issued.

(b) Multinote system Under this option the lender may provide one note for the unguaranteed portion of the loan and no more than 10 notes for the guaranteed portion. When this option is selected by the lender, the holder will receive one of the borrower's executed notes and a Loan Note Guarantee. The Agency will issue a Loan Note Guarantee for each note, including the unguaranteed note, to be attached to the note. An Assignment Guarantee Agreement will not be used when the multinote option is utilized.

(c) After loan closing If a loan is closed using the multinote option and at a later date additional notes are desired, the lender may cause a series of new notes, so that the total number of notes issued does not exceed the total number provided for in paragraph (b) of this section, to be issued as replacement for previously issued guaranteed notes, provided:

(1) Written approval of the Agency is obtained. The Agency will issue the appropriate Loan Note Guarantees to be attached to each of the new notes in exchange for the original Loan Note Guarantee which will be canceled by the Agency;

(2) The borrower agrees and executes the new notes;

(3) The interest rate does not exceed the interest rate in effect when the loan was closed;

(4) The maturity date of the loan is not changed;

(5) The Agency will not bear or guarantee any expenses that may be incurred in reference to such reissuances of notes;

(6) There is adequate collateral securing the notes;

(7) No intervening liens have arisen or have been perfected and the secured lien priority remains the same, and

(8) All holders agree.

(d) Termination of lender servicing fee The lender's servicing fee will stop when the Agency purchases the guaranteed portion of the loan from the secondary market. No such servicing fee may be charged to the Agency and all loan payments and collateral proceeds received will be applied first to the guaranteed loan and, when applied to the guaranteed loan, will be applied on a pro rata basis.

(e) Agency sale of guarantee When the Agency purchases the guaranteed portion, the loan shall not be sold with recourse. The purchased loans may be sold on a nonrecourse basis only, i.e., without a Loan Note Guarantee attached and without recourse. For additional guidance, State Offices should contact the National Office.

§ 4279.76 Participation

The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain title to the notes if any of them are unguaranteed and retain the lender's interest in the collateral.

§ 4279.77 Minimum retention

The lender is required to hold in its own portfolio a minimum of 5 percent of the total loan amount. The amount required to be maintained must be of the unguaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the unguaranteed portion of the loan only through participation.

§ 4279.78 Repurchase from holder

(a) Repurchase by lender A lender has the option to repurchase the unpaid guaranteed portion of the loan from a holder within 30 days of written demand by the holder when the borrower is in default not less than 60 days on principal or interest due on the loan; or the lender has failed to remit to the holder its pro rata share of any payment made by the borrower within 30 days of the lender's receipt thereof. The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The holder must concurrently send a copy of the demand letter to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and prevent default, where and when reasonable. The lender will notify the holder and the Agency of its decision.

(b) Agency repurchase

(1) If the lender does not repurchase the unpaid guaranteed portion of the loan as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase, less the lender's servicing fee, within 30 days after written demand to the Agency from the holder. (This is in addition to the copy of the written demand on the lender.) The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter of the holder to the lender requesting the repurchase.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder must also include evidence of its right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The holder must include in its demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date. The Agency will be subrogated to all rights of the holder.

(3) The Agency will notify the lender of its receipt of the holder's demand for payment. The lender must promptly provide the Agency with the information necessary for the Agency to determine the appropriate amount due the holder. Upon request by the Agency, the lender will furnish a current statement certified by an appropriate authorized officer of the lender of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. Such conflict will suspend the running of the 30 day payment requirement.

(4) Purchase by the Agency neither changes, alters, nor modifies any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the guarantee.

(5) Upon receipt of the appropriate information, the Agency will review the demand and, after verification, will transmit the request to the Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and remit the check to the holder.

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(c) Repurchase for servicing If, in the opinion of the lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must sell the guaranteed portion of the loan to the lender for an amount equal to the unpaid principal and interest on such portion less the lender's servicing fee. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter of the lender or the Agency to the holder requesting the holder to tender its guaranteed portion. The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain. Any repurchase must only be made after the lender obtains the Agency's written approval. If the lender does not repurchase the portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

(d) Termination of interest accrual, when the guaranteed portion is held by the Agency, will be for accounting purposes only when it is likely there will be a loss on the loan. This will cover situations including, but not limited to, bankruptcy cramdowns, liquidations, and transfers and assumptions for less than the debt. The Finance Office will manually calculate the accrued interest in the event a full or partial recovery becomes possible.

§§ 4279.79 - 4279.83 [Reserved]

§ 4279.84 Replacement of document

(a) The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement which was lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of an acceptable certificate of loss and an indemnity bond. The Agency will consult with the Regional Office of the General Counsel (OGC) to ensure that all documents are of legal sufficiency before the reissuance of the Loan Note Guarantee or Assignment Guarantee Agreement.

(b) When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss, notarized and containing a jurat, which includes: -

(i) Name and address of owner;

(ii) Name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement including the name of the borrower, the Agency's case number, date of the Loan Note Guarantee or Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentage of guarantee, and, if an Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) For the holder, evidence demonstrating current ownership of the Loan Note Guarantee and Note or the Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included if in existence. If copies of the endorsement cannot be obtained, best available records of transfer must be submitted to the Agency (e.g., order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal corporation, a State or territory, or the District of Columbia. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less than \$1 million verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

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(3) All indemnity bonds must be issued and payable to the United States of America acting through the USDA. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall hold USDA harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

(4) In those cases where the guaranteed loan was closed under the provision of the multinote system, the Agency will not attempt to obtain, or participate in the obtaining of, replacement notes from the borrower. It will be the responsibility of the holder to bear costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before the Agency will replace any instruments.

(5) State Directors will review all documents when presented by the lender to ensure all requirements are met.

(6) The State Director will contact the Regional OGC for assistance to ensure all documents are legally sufficient before new guarantee instruments are issued.

(7) If the decision is to reissue the Loan Note guarantee, Contract of Guarantee, or Assignment Guarantee Agreement, the following procedure will be followed:

(i) If the multinote system was used, a new Loan Note Guarantee will be prepared using the original face amounts and amounts guaranteed (not outstanding loan balance). At the top of the form type "This Loan Note Guarantee is issued to replace the original dated _____ which was lost, stolen, destroyed, defaced or mutilated." Only execute an original for the holder. Copies may be conformed for the lender and the Agency file. If borrower notes are needed, they must be obtained by the holder from the borrower. The indemnity bond must be kept in a locked, fire-resistant cabinet for safekeeping.

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(ii) If the single note system was used, a new Assignment Guarantee Agreement will be prepared using the original amount except the current principal amount of the loan outstanding and should be inserted on the face of the document. At the top of the form type "This Assignment Guarantee Agreement is issued to replace the original dated _____ which was lost, stolen, destroyed, defaced, or mutilated." Only execute an original for the holder. Copies may be conformed for the lender and the Agency. If a surety bond is issued, it must be kept in a locked, fire-resistant cabinet for safekeeping.

(iii) The lender must execute the replacement forms prior to the Agency's execution of the same.

(iv) Form 4279-7, "Certificates of Incumbency and Signature (Business and Industry)," may be provided.

§§ 4279.85 - 4279.99 [Reserved]

§ 4279.100 OMB control number

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575-0171. Public reporting burden for this collection of information is estimated to vary from 1 hour to 8 hours per response, with an average of 4 hours per response, including time for reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, D.C. 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

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PART 4279 - GUARANTEED LOANMAKING

Subpart B - Business and Industry Loans

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Appendix A - Guide for Completion of Feasibility Studies.

Appendix B - Guide for Sale/Structure of Guaranteed Loans.

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PART 4279 - Guaranteed Loanmaking**Subpart B - Business and Industry Loans****§ 4279.101 Introduction.**

(a) Content. This subpart contains loan processing regulations for the Business and Industry (B&I) Guaranteed Loan Program. It is supplemented by subpart A of this part, which contains general guaranteed loan regulations, and subpart B of part 4287 of this chapter, which contains loan servicing regulations.

(b) Purpose. The purpose of the B&I Guaranteed Loan Program is to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved by bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting community benefits. It is not intended that the guarantee authority will be used for marginal or substandard loans or for relief of lenders having such loans.

(c) Documents. Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office. Any portion of this Instruction appearing in italicized type is considered by the Agency to be administrative procedure and has not been published as part of the regulation in the Federal Register.

(d) Early Agency review. All B&I inquiries, preapplications, or applications should be reviewed by loan officers at the first contact with the Agency to determine that the proposal fits into the overall purpose of the program. The purpose of the early review is to advise the lender as soon as possible when eligibility problems are likely or when there are concerns about whether the project meets the intent of the program. This early communication can prevent unnecessary expense and frustration in the preparation of a full B&I application. Credit quality and collateral should be scrutinized closely early in the process. Loan officers should likewise initiate the environmental review process early in the planning stage and should be alert for projects which may have a significant impact on the environment. As soon as an application is received, make a priority ranking using the worksheet provided in appendix C of this subpart. Document the action by filing the completed worksheet in the project case file.

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Guaranteed Loanmaking

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§ 4279.102 Definitions.

The definitions and abbreviations in § 4279.2 of subpart A of this part are applicable to this subpart.

§ 4279.103 Exception Authority.

Section 4279.15 of subpart A of this part applies to this subpart.

§ 4279.104 Appeals.

Section 4279.16 of subpart A of this part applies to this subpart.

§§ 4279.105 - 4279.106 [Reserved]

§ 4279.107 Guarantee fee.

The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The fee may be passed on to the borrower. Except as provided in this section, the guarantee fee will be 2 percent multiplied by the principal loan amount multiplied by the percent of guarantee and will be paid one time only at the time the Loan Note Guarantee is issued.

(a) The guarantee fee may be reduced to 1 percent if the Agency determines that the business meets the following criteria:

- (1) High impact business development investment (It is the goal of this program to encourage high impact business investment in rural areas. The weight given to business investments will be in accordance with § 4279.155(b)(5) of this subpart); and
- (2) The business is located in a community that is experiencing long term population decline and job deterioration; or
- (3) The business is located in a rural community that has remained persistently poor over the last 60 years; or
- (4) The business is located in a rural community that is experiencing trauma as a result of natural disaster or that is experiencing fundamental structural changes in its economic base.

§ 4279.107 (Con.)

(b) Each fiscal year, the Agency shall establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee fee of 1 percent. The limit will be announced by publishing a notice in the Federal Register. Once the limit has been reached, the guarantee fee for all additional loans obligated during the remainder of that fiscal year will be 2 percent.

Written requests for approval of a guaranteed loan with the reduced guarantee fee must be forwarded to the National Office, Attn: Director, Business Programs Processing Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Director concerning the request confirming approval or disapproval of the request to approve the guaranteed loan with the reduced guarantee fee. After the guaranteed authority has been exhausted, the National Office will provide guidance to the State Directors.

§ 4279.108 Eligible borrowers.

(a) Type of entity. A borrower may be a cooperative, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis; an Indian tribe on a Federal or State reservation or other Federally recognized tribal group; a public body; or an individual. A borrower must be engaged in or proposing to engage in a business. Business may include manufacturing, wholesaling, retailing, providing services, or other activities that will:

- (1) Provide employment;
- (2) Improve the economic or environmental climate;
- (3) Promote the conservation, development, and use of water for aquaculture; or
- (4) Reduce reliance on nonrenewable energy resources by encouraging the development and construction of solar energy systems.

(b) Citizenship. Individual borrowers must be citizens of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence. Citizens and residents of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands shall be considered U.S. citizens. Corporations or other nonpublic body organization-type borrowers must be at least 51 percent owned by persons who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence.

(c) Rural area. The business financed with a B&I Guaranteed Loan must be located in a rural area. Loans to borrowers with facilities located in both urban and rural areas will be limited to the amount necessary to finance the facility located in the eligible rural area.

(1) Rural areas include all territory of a State that is:

(i) Not within the outer boundary of any city having a population of 50,000 or more; and

(ii) Not within an area that is urbanized or urbanizing as defined in this section.

(2) All density determinations will be made on the basis of minor civil divisions or census county divisions as used by the Bureau of the Census in the latest decennial census of the U.S. In making the density calculations, large nonresidential tracts devoted to urban land uses such as railroad yards, airports, industrial sites, parks, golf courses, cemeteries, office parks, shopping malls, or land set aside for such purposes will be excluded.

(3) An urbanized area is an area immediately adjacent to a city with a population of 50,000 or more, that for general social and economic purposes forms a single community with such a city. An urbanizing area is an area immediately adjacent to a city with a population of 50,000 or more with a population density of more than 100 persons per square mile or is an area with a population density of less than 100 persons per square mile which appears likely, based on development and population trends, to become urbanized in the foreseeable future. The corporate status of an urbanized or urbanizing area is not material. An area located in recognizable open country or separated from any city of 50,000 or more population by recognizable open country or by a river, will be assumed to be not urbanized or urbanizing.

§ 4279.108 (Con.)

(d) Other credit All applications for assistance will be accepted and processed without regard to the availability of credit from any other source. Applicants are to be advised of other potential sources of credit but are not encouraged or required to pursue financing from any of these sources in lieu of assistance from the Agency.

§§ 4279.109 - 4279.112 [Reserved]

§ 4279.113 Eligible loan purposes.

Loan purposes must be consistent with the general purpose contained in § 4279.101 of this subpart. They include but are not limited to the following:

- (a) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.
- (b) Business conversion, enlargement, repair, modernization, or development.
- (c) Purchase and development of land, easements, rights-of-way, buildings, or facilities.
- (d) Purchase of equipment, leasehold improvements, machinery, supplies, or inventory.
- (e) Pollution control and abatement.
- (f) Transportation services incidental to industrial development.
- (g) Startup costs and working capital.
- (h) Agricultural production, when not eligible for Farm Service Agency (FSA) farmer program assistance and when it is part of an integrated business also involved in the processing of agricultural products.
 - (1) Examples of potentially eligible production include but are not limited to: an apple orchard in conjunction with a food processing

plant; poultry buildings linked to a meat processing operation; or sugar beet production coupled with storage and processing. Any agricultural production considered for B&I financing must be owned, operated, and maintained by the business receiving the loan for which a guarantee is provided. Independent agricultural production operations, even if not eligible for FSA farmer programs assistance, are not eligible for the B&I program.

(2) The agricultural-production portion of any loan will not exceed 50 percent of the total loan or \$1 million, whichever is less.

- (i) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from Farm Credit System institutions and other lenders provided that the purchase is required for all of their borrowers. Purchase of startup cooperative stock for family-sized farms where commodities are produced to be processed by the cooperative.
- (j) Aquaculture, including conservation, development, and utilization of water for aquaculture.
- (k) Commercial fishing.
- (l) Commercial nurseries engaged in the production of ornamental plants and trees and other nursery products such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage.
- (m) Forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, and forest nurseries and related activities such as reforestation.
- (n) The growing of mushrooms or hydroponics.
- (o) Interest (including interest on interim financing) during the period before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier.
- (p) Feasibility studies.
- (q) To refinance outstanding debt when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Existing lender debt may be included provided that, at the time of application, the loan has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt), the lender is providing better rates or terms, and the refinancing is a secondary part (less than 50 percent) of the overall loan.

(r) **Takeout of interim financing.** Guaranteeing a loan after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a complete preapplication or application which proposes such interim financing prior to completing the interim loan. A lender that is considering an interim loan should be advised that the Agency assumes no responsibility or obligation for interim loans advanced prior to the Conditional Commitment being issued.

(s) **Fees and charges for professional services and routine lender fees.**

(t) **Agency guarantee fee.**

(u) **Tourist and recreation facilities, including hotels, motels, and bed and breakfast establishments, except as prohibited under ineligible purposes.**

(1) Tourism and recreation projects can be a vital part of a rural area's economic development strategy. On the other hand, they are typically difficult credit decisions due to the risks involved. You may want to obtain an independent feasibility study to make sure that demand, utilization, and related cash flow issues are looked at closely.

(2) Projects that are commonly not successful in the area normally should not be financed. This does not mean that new ventures should not be considered. It means, as a hypothetical example, that if 5 out of 10 ski areas without snowmaking capabilities in Vermont have failed, such a recreational proposal probably carries excessive risk. Similar examples might be hotels or motels in many rural areas, outdoor tennis or swimming pools, or water slides in northern climates.

(3) Work closely with the lender, early in the process, on credit quality. Many requests will meet the "loan purpose" eligibility test but may not be credit worthy due to high risk.

(v) **Educational or training facilities.**

(w) **Community facility projects which are not listed as an ineligible loan purpose such as convention centers.**

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(x) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations.

(y) The financing of housing development sites provided that the community demonstrates a need for additional housing to prevent a loss of jobs in the area or to house families moving to the area as a result of new employment opportunities.

(z) Community antenna television services or facilities.

(aa) Provide loan guarantees to assist industries adjusting to terminated Federal agricultural programs or increased foreign competition.

§ 4279.114 Ineligible purposes.

(a) Distribution or payment to an individual owner, partner, stockholder, or beneficiary of the borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the borrower.

(b) Projects in excess of \$1 million that would likely result in the transfer of jobs from one area to another and increase direct employment by more than 50 employees.

(c) Projects in excess of \$1 million that would increase direct employment by more than 50 employees, if the project would result in an increase in the production of goods for which there is not sufficient demand, or if the availability of services or facilities is insufficient to meet the needs of the business.

(d) Charitable institutions, churches, or church-controlled or fraternal organizations.

(e) Lending and investment institutions and insurance companies.

(f) Assistance to Government employees and military personnel who are directors or officers or have a major ownership of 20 percent or more in the business.

(g) Racetracks for the conduct of races by professional drivers, jockeys, etc., where individual prizes are awarded in the amount of \$500 or more.

(h) Any business that derives more than 10 percent of annual gross revenue from gambling activity.

§ 4279.114 (Con.)

- (i) Any illegal business activity.
- (j) Prostitution.
- (k) Any line of credit.
- (l) The guarantee of lease payments.
- (m) The guarantee of loans made by other Federal agencies.
- (n) Owner-occupied housing. Bed and breakfasts, storage facilities, et al, are allowed when the pro rata value of the owner's living quarters is deleted.
- (o) Projects that are eligible for the Rural Rental Housing and Rural Cooperative Housing loans under sections 515, 521, and 538 of the Housing Act of 1949, as amended.
- (p) Loans made with the proceeds of any obligation the interest on which is excludable from income under 26 U.S.C. § 103 or a successor statute. Funds generated through the issuance of tax-exempt obligations may neither be used to purchase the guaranteed portion of any Agency guaranteed loan nor may an Agency guaranteed loan serve as collateral for a tax-exempt issue. The Agency may guarantee a loan for a project which involves tax-exempt financing only when the guaranteed loan funds are used to finance a part of the project that is separate and distinct from the part which is financed by the tax-exempt obligation, and the guaranteed loan has at least a parity security position with the tax-exempt obligation.
- (q) The guarantee of loans where there may be, directly or indirectly, a conflict of interest or an appearance of a conflict of interest involving any action by the Agency. An example of a conflict of interest would be where guaranteed funds are used to finance a Federal office building where one of the tenants leasing the space is a USDA agency or organization.
- (r) Golf courses.

§ 4279.115 Prohibition under Agency programs.

No B&I loans guaranteed by the Agency will be conditioned on any requirement that the recipients of such assistance accept or receive electric service from any particular utility, supplier, or cooperative.

§§ 4279.116 - 4279.118 [Reserved]

§ 4279.119 Loan guarantee limits.

(a) Loan amount. The total amount of Agency loans to one borrower, including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing Agency guaranteed loans, and new loan request, must not exceed \$10 million. The Administrator may, at the Administrator's discretion, grant an exception to the \$10 million limit with the concurrence of the Under Secretary under the following circumstances:

(1) The project to be financed is a high-priority project. Priority will be determined in accordance with the criteria contained in § 4279.155 of this subpart;

(2) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the guarantee is not approved; and

(3) Under no circumstances will the total amount of guaranteed loans to one borrower, including the guaranteed and unguaranteed portions, the outstanding principal and interest balance of any existing Agency guaranteed loans, and new loan request, exceed \$25 million;

(4) The percentage of guarantee will not exceed 60 percent. No exception to this requirement will be approved under paragraph (b) of this section for loans exceeding \$10 million; and

(5) Any request for a guaranteed loan exceeding the \$10 million limit must be submitted to the Agency in the form of a preapplication. The preapplication must be submitted to the National Office for review and concurrence before encouraging a full application.

(b) Percent of guarantee. The percentage of guarantee, up to the maximum allowed by this section, is a matter of negotiation between the lender and the Agency. The maximum percentage of guarantee is 80 percent for loans of \$5 million or less, 70 percent for loans between \$5 and \$10 million, and 60 percent for loans exceeding \$10 million. Notwithstanding the preceding, the Administrator may, at the Administrator's discretion, grant an exception allowing guarantees of up to 90 percent on loans of \$10 million or less under the following circumstances:

(1) The project to be financed is a high-priority project. Priority will be determined in accordance with the criteria contained in § 4279.155 of this subpart;

§ 4279.119(b)

(2) The lender must document to the satisfaction of the Agency that the loan will not be made and the project will not be completed if the higher guarantee percentage is not approved; and

(3) The State Director may grant an exception for loans of up to 90 percent on loans of \$2 million or less subject to the State Director's delegated loan approval authority and meeting all of the conditions as set forth in this section. In cases where the State Director does not have the loan approval authority to approve a loan of \$2 million or less or the proposed percentage, the case must be submitted to the National Office for review.

(4) Each fiscal year, the Agency will establish a limit on the maximum portion of guarantee authority available for that fiscal year that may be used to guarantee loans with a guarantee percentage exceeding 80 percent. The limit will be announced by publishing a notice in the Federal Register. Once the limit has been reached, the guarantee percentage for all additional loans guaranteed during the remainder of that fiscal year will not exceed 80 percent.

(5) Written requests for approval of a guaranteed loan with a guarantee percentage above 80 percent must be forwarded to the National Office, Attn: Director, Business Programs Processing Division, for review and consideration prior to obligation of the guaranteed loan. The Administrator will provide a written response to the State Director concerning the request confirming approval or disapproval of the request. After the guaranteed authority has been exhausted, the National Office will provide guidance to the State Directors.

§ 4279.120 Fees and charges.

(a) Routine lender fees The lender may establish charges and fees for the loan provided they are similar to those normally charged other applicants for the same type of loan in the ordinary course of business.

(b) Professional services Professional services are those rendered by entities generally licensed or certified by States or accreditation associations, such as architects, engineers, packagers, accountants, attorneys, or appraisers. The borrower may pay fees for professional services needed for planning and developing a project provided that the amounts are reasonable and customary in the area. Professional fees may be included as an eligible use of loan proceeds.

(c) Fee Review. You should review fees in the application but rely on the opinion of the lender as to their reasonableness.

§§ 4279.121 - 4279.124 [Reserved]

§ 4279.125 Interest rates.

The interest rate for the guaranteed loan will be negotiated between the lender and the applicant and may be either fixed or variable as long as it is a legal rate. Interest rates will not be more than those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval. Lenders are encouraged to utilize the secondary market and pass interest-rate savings on to the borrower.

(a) A variable interest rate agreed to by the lender and borrower must be a rate that is tied to a base rate agreed to by the lender and the Agency. The variable interest rate may be adjusted at different intervals during the term of the loan, but the adjustments may not be more often than quarterly and must be specified in the Loan Agreement. The lender must incorporate, within the variable rate Promissory Note at loan closing, the provision for adjustment of payment installments coincident with an interest-rate adjustment. The lender will ensure that the outstanding principal balance is properly amortized within the prescribed loan maturity to eliminate the possibility of a balloon payment at the end of the loan.

(b) Any change in the interest rate between the date of issuance of the Conditional Commitment and before the issuance of the Loan Note Guarantee must be approved in writing by the Agency approval official. Approval of such a change will be shown as an amendment to the Conditional Commitment.

(c) It is permissible to have one interest rate on the guaranteed portion of the loan and another rate on the unguaranteed portion of the loan provided that the rate on the guaranteed portion does not exceed the rate on the unguaranteed portion.

(d) A combination of fixed and variable rates will be allowed.

(e) While the lender and applicant negotiate the interest rate on a B&I loan, you have a responsibility as an Agency loan officer to make sure that the rate is no more than that rate customarily charged borrowers under similar circumstances when there is no guarantee. You should encourage lenders, by counseling and the use of the priority ranking system, to pass the savings of the secondary market on to the borrower. Make sure that new lenders understand the requirements of this section early in the loan process.

§ 4279.126 Loan terms.

(a) The maximum repayment for loans on real estate will not exceed 30 years; machinery and equipment repayment will not exceed the useful life of the machinery and equipment purchased with loan funds or 15 years, whichever is less; and working capital repayment will not exceed 7 years. The term for a loan that is being refinanced may be based on the collateral the lender will take to secure the loan. *See appendix B of this subpart for structuring multiple note loans.*

(b) The first installment of principal and interest will, if possible, be scheduled for payment after the project is operational and has begun to generate income. However, the first full installment must be due and payable within 3 years from the date of the Promissory Note and be paid at least annually thereafter. Interest-only payments will be paid at least annually from the date of the note. *Monthly payments will normally be expected except for seasonal-type businesses.*

(c) Only loans which require a periodic payment schedule which will retire the debt over the term of the loan without a balloon payment will be guaranteed.

(d) A loan's maturity will take into consideration the use of proceeds, the useful life of assets being financed, and the borrower's ability to repay the loan. The lender may apply the maximum guidelines specified above only when the loan cannot be repaid over a shorter term.

(e) All loans guaranteed through the B&I program must be sound, with reasonably assured repayment.

§§ 4279.127 - 4279.130 [Reserved]**§ 4279.131 Credit quality.**

The lender is primarily responsible for determining credit quality and must address all of the elements of credit quality in a written credit analysis including adequacy of equity, cash flow, collateral, history, management, and the current status of the industry for which credit is to be extended. *In reviewing the lender's analysis and related materials, pay particular attention to working capital since it is usually critical to project success.*

(a) Cash flow. All efforts will be made to structure or restructure debt so that the business has adequate debt coverage and the ability to accommodate expansion. The ability to repay a loan from the cash flow of the business is the most important consideration in the loanmaking process. You should not approve loan guarantee requests that do not

show repayment ability. Historical operation reports are the best basis to evaluate cash flow. Review interim operating statements carefully, for they are just that, interim statements. Use a realistic projection of future earnings. Test such a projection against industry averages and historical operations to assess reasonableness and explain any significant variations.

(b) Collateral.

(1) Collateral must have documented value sufficient to protect the interest of the lender and the Agency and, except as set forth in paragraph (b) (2) of this section, the discounted collateral value will normally be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy.

(2) Some businesses are predominantly cash-flow oriented, and where cash flow and profitability are strong, loan-to-value coverage may be discounted accordingly. A loan primarily based on cash flow must be supported by a successful and documented financial history.

(3) Do not reject B&I applications automatically when weak collateral is the only unfavorable factor. Other factors, such as a strong indication of repayment ability and managerial ability, can offset this deficiency.

(4) Make sure that all worthwhile collateral is pledged to the project, but do not require assets with little or no collateral support to be pledged mainly for cosmetic reasons.

(c) Industry. Current status of the industry will be considered and businesses in areas of decline will be required to provide strong business plans which outline how they differ from the current trends. The regulatory environment surrounding the particular business or industry will be considered.

(d) Equity. A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at the time the Loan Note Guarantee is issued. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at the time the Loan Note Guarantee is issued. Tangible balance sheet equity will be determined in accordance with Generally Accepted Accounting Principles. Modifications to the equity requirements may be granted by the Administrator or designee. For the Administrator to consider a reduction in the equity requirement, the borrower must furnish the following:

§ 4279.131(d) (Con.)

(1) Collateralized personal and corporate guarantees, including any parent, subsidiary, or affiliated company, when feasible and legally permissible (in accordance with § 4279.149 of this subpart), and

(2) Pro forma and historical financial statements which indicate the business to be financed meets or exceeds the median quartile (as identified in Robert Morris Associates Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(3) The Agency may require higher equity requirements if conditions warrant. As a loan officer, you will expect to see tangible balance sheet equity meeting at least the minimum requirement unless an exception is granted by the Administrator or designee. Riskier loans such as startups, recreation and tourism projects, energy-related businesses and loans without personal guarantees may necessitate a higher equity requirement than the minimum equity requirements noted above. Solid equity positions provide incentive for principals to remain committed to the success of the applicant while reducing the debt burden.

(e) Lien priorities. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior position may be considered provided that discounted collateral values are adequate to secure the loan in accordance with paragraph (b) of this section after considering prior liens.

(f) Management. A thorough review of key management personnel will be completed to ensure that the business has adequately trained and experienced managers. Assessment of management in areas such as education, experience, and motivation is an important factor in loan analysis. Consider the lender's opinion on management, but do your own independent assessment and document your findings in the loan docket. Comment briefly when management capacity is clearly satisfactory. Otherwise, address any weaknesses and document measures to bolster deficient areas. Work closely with the lender if there are concerns in the management of the business.

§§ 4279.132 - 4279.136 [Reserved]

§ 4279.137 Financial statements.

RD Instruction 4279-B
§ 4279.137 (Con.)

(a) The lender will determine the type and frequency of submission of financial statements by the borrower. At a minimum, annual financial statements prepared by an accountant in accordance with Generally Accepted Accounting Principles will be required.

(b) If specific circumstances warrant and the proposed guaranteed loan will exceed \$3 million, the Agency may require annual audited financial statements. For example, the need for audited financial statements will be carefully considered in connection with loans that depend heavily on inventory and accounts receivable for collateral.

§§ 4279.138 - 4279.142 [Reserved]

§ 4279.143 Insurance.

(a) Hazard. Hazard insurance with a standard mortgage clause naming the lender as beneficiary will be required on every loan in an amount that is at least the lesser of the depreciated replacement value of the collateral or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk during construction by the business, and property damage.

(b) Life. The lender may require life insurance to insure against the risk of death of persons critical to the success of the business. When required, coverage will be in amounts necessary to provide for management succession or to protect the business. The cost of insurance and its effect on the applicant's working capital must be considered as well as the amount of existing insurance which could be assigned without requiring additional expense.

(c) Worker compensation Worker compensation insurance is required in accordance with State law.

(d) Flood. National flood insurance is required in accordance with 7 CFR, part 1806, subpart B (RD Instruction 426.2, available in any field office or the National Office).

(e) Other. Public liability, business interruption, malpractice, and other insurance appropriate to the borrower's particular business and circumstances will be considered and required when needed to protect the interests of the borrower.

§ 4279.144 Appraisals.

Lenders will be responsible for ensuring that appraisal values adequately reflect the actual value of the collateral. All real property appraisals associated with Agency guaranteed loanmaking and servicing transactions will meet the requirements contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 and the appropriate guidelines contained in Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practices (USPAP). All appraisals will include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral. For additional guidance and information concerning the completion of real property appraisals, refer to subpart A of part 1922 of this title and to "Standard Practices for Environmental Site Assessments: Transaction Screen Questionnaire" and "Phase I Environmental Site Assessment," both published by the American Society of Testing and Materials. Chattels will be evaluated in accordance with normal banking practices and generally accepted methods of determining value.

§§ 4279.145 - 4279.148 [Reserved]

§ 4279.149 Personal and corporate guarantees.

(a) Personal and corporate guarantees, when obtained, are part of the collateral for the loan. However, the value of such guarantee is not considered in determining whether a loan is adequately secured for loanmaking purposes.

(b) Personal and corporate guarantees for those owning greater than 20 percent of the borrower will be required where legally permissible, except as provided for in this section. Guarantees of parent, subsidiaries, or affiliated companies and secured guarantees may also be required.

(c) Exceptions to the requirements for personal guarantees must be requested by the lender and concurred in by the Agency approval official on a case-by-case basis. The lender must document that collateral, equity, cash flow, and profitability indicate an above average ability to repay the loan. Closely review collateral, equity, cash flow, and profitability before concurring in any exception to guarantees.

§ 4279.150 Feasibility studies.

A feasibility study by a qualified independent consultant may be required by the Agency for start-up businesses or existing businesses when the project will significantly affect the borrower's operations. An acceptable feasibility study should include, but not be limited to, economic, market, technical, financial, and management feasibility. Feasibility studies will normally be conducted in accordance with appendix A of this subpart.

§§ 4279.151 - 4279.154 [Reserved]

§ 4279.155 Loan priorities.

Applications and preapplications received by the Agency will be considered in the order received; however, for the purpose of assigning priorities as described in paragraph (b) of this section, the Agency will compare an application to other pending applications. *The Agency will cooperate fully with appropriate State, regional, and local agencies in guaranteeing loans in a manner which will ensure maximum support of their strategies for development of rural areas.*

(a) When applications on hand otherwise have equal priority, applications for loans from qualified veterans will have preference.

(b) Priorities will be assigned by the Agency to eligible applications on the basis of a point system as contained in this section. The application and supporting information will be used to determine an eligible proposed project's priority for available guarantee authority. All lenders, including CLP lenders, will consider Agency priorities when choosing projects for guarantee. The lender will provide necessary information related to determining the score, as requested. *The State Office will complete the priority scoresheet (appendix C).*

(1) Population priority. Projects located in an unincorporated area or in a city with under 25,000 population (10 points).

(2) Community priority. The priority score for community will be the total score for the following categories:

(i) Located in an eligible area of long term population decline and job deterioration based on reliable statistical data (5 points).

(ii) Located in a rural community that has remained persistently poor over the last 60 years (5 points).

§ 4279.155(b)(2) (Con.)

- (iii) Located in a rural community that is experiencing trauma as a result of natural disaster or experiencing fundamental structural changes in its economic base (5 points).
 - (iv) Located in a city or county with an unemployment rate 125 percent of the statewide rate or greater (5 points).
- (3) Empowerment Zone/Enterprise Community (EZ/EC).
- (i) Located in an EZ/EC designated area (10 points).
 - (ii) Located in a designated Champion Community (5 points). A Champion Community is a community which developed a strategic plan to apply for an EZ/EC designation, but not selected as a designated EZ/EC Community.
- (4) Loan features. The priority score for loan features will be the total score for the following categories.
- (i) Lender will price the loan at the Wall Street Journal published Prime Rate plus 1.5 percent or less (5 points).
 - (ii) Lender will price the loan at the Wall Street Journal published Prime Rate plus 1 percent or less (5 points).
 - (iii) The Agency guaranteed loan is less than 50 percent of project cost (5 points).
 - (iv) Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size (5 points).
- (5) High impact business investment priorities. The priority score for high impact business investment will be the total score for the following three categories:
- (i) Industry. The priority score for industry will be the total score for the following except that the total score for industry cannot exceed 10 points:
 - (A) Industry that has 20 percent or more of its sales in international markets (5 points).
 - (B) Industry that is not already present in the community (5 points).

(ii) **Business.** The priority score for business will be the total score for the following:

(A) Business that offers high value, specialized products and services that command high prices (2 points).

(B) Business that provides an additional market for existing local business (3 points).

(C) Business that is locally owned and managed (3 points).

(D) Business that will produce a natural resource value-added product (2 points).

(iii) **Occupations.** The priority score for occupations will be the total score for the following, except that the total score for job quality cannot exceed 10 points:

(A) Business that creates jobs with an average wage exceeding 125 percent of the Federal minimum wage (5 points).

(B) Business that creates jobs with an average wage exceeding 150 percent of the Federal minimum wage (10 points).

(6) **Administrative points.** The State Director may assign up to 10 additional points to an application to account for such factors as statewide distribution of funds, natural or economic emergency conditions, or area economic development strategies. An explanation of the assigning of these points by the State Director will be appended to the calculation of the project score maintained in the case file. If an application is considered in the National Office, the Administrator may also assign up to an additional 10 points. The Administrator may assign the additional points to an application to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters.

§ 4279.156 Planning and performing development.

(a) Design policy. The lender must ensure that all project facilities must be designed utilizing accepted architectural and engineering practices and must conform to applicable Federal, state, and local codes and requirements. The lender will also ensure that the project will be completed with available funds and, once completed, will be used for its intended purpose and produce products in the quality and quantity proposed in the completed application approved by the Agency.

(b) Project control The lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction conforms with applicable Federal, state, and local code requirements; proceeds are used in accordance with the approved plans, specifications, and contract documents; and that funds are used for eligible project costs. Normally, you should expect the lender to:

- (1) Have inspections made by a qualified individual prior to any progress payment.
- (2) Use any borrower funds in the project first.
- (3) Make sure the borrower has 100 percent performance/payment bonds on the contractor.
- (4) Have a complete set of plans and specifications at the lending institution.
- (5) Have a firm construction contract cost and provisions for change order approval, retainage percentage, and disbursement schedule.
- (6) Obtain lien waivers from all contractors prior to any disbursement.

(c) Equal opportunity For all construction contracts in excess of \$10,000, the contractor must comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR, part 60). The borrower and lender are responsible for ensuring that the contractor complies with these requirements.

(d) Americans with Disabilities Act (ADA) B&I Guaranteed Loans which involve the construction of or addition to facilities that accommodate the public and commercial facilities, as defined by the ADA, must comply with the ADA. The lender and borrower are responsible for compliance.

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§ 4279.156 (Con.)

(e) Agency role. You may wish, on complicated construction projects, to have the Agency engineer meet with the lender and the project architect or engineer. Lenders, knowing the Agency's expertise in construction monitoring, may wish you to take an active role in job meetings and inspections. Do not do this. You must avoid putting the Agency in a situation where it becomes responsible for decisions on such topics. Always make it clear that your presence is only for the Agency's benefit, not the lender's or borrower's. Use discretion to make sure that Agency involvement does not lead to the lender's abandonment of its responsibilities. Likewise, if complex environmental issues surface, you may request that the state environmental coordinator meet with the lender and project architect or engineer.

§§ 4279.157 - 4279.160 [Reserved]

§ 4279.161 Filing preapplications and applications.

Borrowers and lenders are encouraged to file preapplications and obtain Agency comments before completing an application. However, if they prefer, they may file a complete application as the first contact with the Agency. Neither preapplications nor applications will be accepted or processed unless a lender has agreed to finance the proposal.

(a) Preapplications Lenders may file preapplications by submitting the following to the Agency:

(1) A letter signed by the borrower and lender containing the following:

(i) Borrower's name, organization type, address, contact person, and federal tax identification and telephone numbers.

(ii) Amount of the loan request, percent of guarantee requested, and the proposed rates and terms.

(iii) Name of the proposed lender, address, telephone number, contact person, and lender's Internal Revenue Service (IRS) identification number.

(iv) Brief description of the project, products, services provided, and availability of raw materials and supplies.

(v) Type and number of jobs created or saved.

§ 4279.161(a)(1) (Con)

(vi) Amount of borrower's equity and a description of collateral, with estimated values, to be offered as security for the loan.

(vii) If a corporate borrower, the names and addresses of the borrower's parent, affiliates, and subsidiary firms, if any, and a description of the relationship.

(2) A completed Form 4279-2, "Certification of Non-Relocation and Market Capacity Information Report," if the proposed loan is in excess of \$1 million and will increase direct employment by more than 50 employees.

(3) For existing businesses, a current balance sheet and a profit and loss statement not more than 90 days old and financial statements for the borrower and any parent, affiliates, and subsidiaries for at least the 3 most recent years.

(4) For start-up businesses, a preliminary business plan must be provided.

(b) Applications. Except for CLP lenders, applications will be filed with the Agency by submitting the following information: (CLP applications will be completed in accordance with § 4279.43(g)(1) of subpart A of this part but CLPlenders must have the material listed in this paragraph in their files.)

(1) A completed Form 4279-1, "Application for Loan Guarantee (Business and Industry)".

(2) The information required for filing a preapplication, as listed above, if not previously filed or if the information has changed.

(3) Form RD 1940-20, "Request for Environmental Information," and attachments, unless the project is categorically excluded under Agency environmental regulations.

(4) A personal credit report from an acceptable credit reporting company for a proprietor (owner), each partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the applicant, except for those corporations listed on a major stock exchange. Credit reports are not required for elected and appointed officials when the applicant is a public body.

- (5) Intergovernmental consultation comments in accordance with RD Instruction 1940-J and 7 CFR, part 3015, subpart V.
- (6) Appraisals, accompanied by a copy of the appropriate environmental site assessment, if available. (Agency approval in the form of a Conditional Commitment may be issued subject to receipt of adequate appraisals.)
- (7) For all businesses, a current (not more than 90 days old) balance sheet, a pro forma balance sheet at startup, and projected balance sheets, income and expense statements, and cash flow statements for the next 2 years. Projections should be supported by a list of assumptions showing the basis for the projections.
- (8) Lender's complete written analysis, including spreadsheets of the balance sheets and income statements for the 3 previous years (for existing businesses), pro forma balance sheet at startup, and 2 years projected yearend balance sheets and income statements, with appropriate ratios and comparisons with industrial standards (such as Dun & Bradstreet or Robert Morris Associates). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets and all income and expense items as a percentage of sales. The lender's credit analysis must address the borrower's management, repayment ability including a cash-flow analysis, history of debt repayment, necessity of any debt refinancing, and the credit reports of the borrower, its principals, and any parent, affiliate, or subsidiary.
- (9) Commercial credit reports obtained by the lender on the borrower and any parent, affiliate, and subsidiary firms.
- (10) Current personal and corporate financial statements of any guarantors.
- (11) A proposed Loan Agreement or a sample Loan Agreement with an attached list of the proposed Loan Agreement provisions. The Loan Agreement must be executed by the lender and borrower before the Agency issues a Loan Note Guarantee. The following requirements must be addressed in the Loan Agreement:
 - (i) Prohibition against assuming liabilities or obligations of others.
 - (ii) Restriction on dividend payments.

- (iii) Limitation on the purchase or sale of equipment and fixed assets.
 - (iv) Limitation on compensation of officers and owners.
 - (v) Minimum working capital or current ratio requirement.
 - (vi) Maximum debt-to-net worth ratio.
 - (vii) Restrictions concerning consolidations, mergers, or other circumstances.
 - (viii) Limitations on selling the business without the concurrence of the lender.
 - (ix) Repayment and amortization of the loan.
 - (x) List of collateral and lien priority for the loan including a list of persons and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial statements. Financial statements on the corporate and personal guarantors must be updated at least annually.
 - (xi) Type and frequency of financial statements to be required for the duration of the loan.
 - (xii) The final Loan Agreement between the lender and borrower will contain any additional requirements imposed by the Agency in its Conditional Commitment.
 - (xiii) *A section within the Loan Agreement will be established at this time for the later insertion of any necessary measures by the borrower to avoid or reduce adverse environmental impacts from this proposal's construction or operation. Such measures, if necessary, will be determined by the Agency through the completion of the environmental review process.*
- (12) A business plan, which includes, at a minimum, a description of the business and project, management experience, products and services, proposed use of funds, availability of labor, raw materials and supplies, and the names of any corporate parent, affiliates, and subsidiaries with a description of the relationship. Any or all of these requirements may be omitted if the information is included in a feasibility study.

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§ 4279.164(b) (Con.)

(13) Independent feasibility study, if required.

(14) For companies listed on a major stock exchange or subject to the Securities and Exchange Commission regulations, a copy of SEC Form 10-K, "Annual Report Pursuant to sections 13 or 15D of the Act of 1934."

(15) For health care facilities, a certificate of need, if required by statute.

(16) A certification by the lender that it has completed a comprehensive analysis of the proposal, the applicant is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment ability based on the borrower's history, projections and equity, and the collateral to be obtained.

(17) Any additional information required by the Agency.

§§ 4279.162 - 4279.163 [Reserved]

§ 4279.164 Preapplication processing.

The purpose of a preapplication is to allow a lender and borrower to submit a limited amount of information, most of which should be easily obtained, so that the Agency can determine and advise the lender whether the request is likely to meet the requirements of the B&I program. The review and response to any complete preapplication must be timely. When you receive a preapplication, check to make sure the material is complete and signed by the appropriate parties. Do not accept any request not signed by a lender. Do the following when you receive a complete preapplication:

(a) Nonrelocation. If the loan is in excess of \$1 million and will increase direct employment by more than 50 employees, immediately send seven copies of the completed Form 4279-2 to the National Office. You should discuss this issue with the lender to ensure employment projections are realistic to avoid delays in loan processing as a result of unnecessary Department of Labor clearances.

(b) Privacy. If the loan applicant is either an individual or a partnership of five or fewer members, take the following actions:

(1) Send Form RD 410-7, "Notification to Applicant on Use of Financial Information from Financial Institution," to the applicant within 3 days.

S 4279.164(b) (Con.)

(2) When requesting financial records from the lender or any other financial institution, send the following notification with the request:

I certify that the United States Department of Agriculture, has complied with the applicable provisions of Title XI, Public Law 95-630, in seeking financial information regarding (borrower) .

(3) Provide any source from whom you obtain information concerning an individual with one copy of Form RD 410-10, "Privacy Act Statement to References," and document delivery for the file.

(c) Decision.

(1) Favorable response. Encourage the lender, in writing, to file a complete application if the project appears likely to meet the requirements to receive a B&I guarantee. Make it clear in your letter that your response is not an approval and list any major concerns that you have. Make sure that the lender knows exactly what items are required for a full application.

(2) Unfavorable response. Discourage the lender, in writing, from filing a complete application if your review indicates that the project will not meet minimum credit standards for a sound loan, if it is ineligible, if it lacks sufficient priority, or if there are other reasons, such as lack of funds, that will preclude the timely approval of the request. List all reasons for discouraging the application in your letter to the lender. Such a letter is not a denial and cannot be appealed. The lender and borrower may file a complete application in spite of receiving a letter of discouragement from the Agency, and you must accept and process it.

(d) Identification numbers.

(1) Case number. Use the state and county code number followed by:

(i) The Social Security Number of a borrower applying as a proprietorship. If the borrower is a husband and wife, either Social Security Number may be used.

(ii) The IRS tax identification number of an organization-type borrower.

RD Instruction 4279-B
§ 4279.164(d) (Con.)

(2) Lender and holder identification A lender's and holder's IRS tax identification number will be used when an identification number is needed.

(e) Rural Community Facilities Tracking System (RCFTS) Update RCFTS upon receipt of a preapplication and when any significant processing actions take place.

§ 4279.165 Evaluation of application.

(a) General review The Agency will evaluate the application and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

(1) Some lenders and borrowers will skip the preapplication process and submit a full application as the first contact with the Agency. In such cases, make sure that you take the nonrelocation and privacy actions described under preapplication review.

(2) Complete the priority worksheet (appendix C of this subpart) in accordance with § 4279.155 of this subpart. Enter the results in RCFTS.

(3) Use a processing checklist to review the application for completeness. Develop a processing checklist specific to the State or use appendix D of this subpart. Complete Part C of Form 4279-1 carefully. Ensure that the proposed borrower has adequate repayment ability based on a thorough analysis by the lender.

(4) As you review the application, attempt to review any concerns with the lender and develop any loan conditions that are necessary to meet Agency requirements in such a manner that they are also acceptable to the lender and the borrower.

(5) You or a designee must visit the project site and discuss the proposal with the lender and borrower. If there are multiple sites, visit a representative sample to develop a better understanding of the project operation. For businesses without a developed project site, you only need visit the lender and borrower. Document all visits in writing.

§ 4279.165(a) (Con.)

(6) Organize applications into a case folder in accordance with RD Instruction 2033-A.

(7) Enter all appropriate information about the borrower, lender, and loan guarantee request in RCFTS and update as information or the application status changes.

(b) Environmental requirements The environmental review process must be completed, in accordance with subpart G of part 1940 prior to the issuance of the Conditional Commitment, loan approval, or obligation of funds, whichever occurs first. The environmental review process must be initiated as early as possible. The Agency should ensure that the lender and the borrower understand the environmental review process and their respective responsibilities for assisting the Agency in this process. Technical advice and guidance is available through the State Environmental Coordinator and should be obtained whenever any complex or controversial environmental issues are expected.

(c) State loan committee. The State Director may establish a State loan committee on an ad hoc basis to review any B&I application. The makeup of such a committee is at the discretion of the State Director. If you hold a loan review meeting, minutes of the meeting, including any recommendations of the group, will be filed in the case file. Only Agency employees will be voting members of a State loan review committee. However, such a committee is advisory in nature. The State Director is solely responsible for all decisions, not the committee.

(d) Concurrence. If concurrence of the National Office is necessary, promptly send the whole case file, with recommendations and the environmental review documents, for review and concurrence. To help ensure a quick response, make sure the file is well organized and that pertinent information is easily accessible for National Office loan officers. If public comments on environmental issues or assessments are required, you should attempt to have the comment period completed as early as possible. However, if the comment period is the only loan docket item not completed, do not wait to submit the file to the National Office. The National Office will commence its review but withhold its concurrence until the expiration of the comment period and the resolution of any comments.

§ 4279.166 Timeframe for processing applications.

All guaranteed loan applications should be approved or disapproved, and the lender notified in writing not later than 60 days after receipt of a completed application, unless approval is prevented by lack of guarantee authority.

RD Instruction 4279-B
§ 4279.166 (Con.)

(a) If an application is not complete, the lender will be notified in writing not later than 20 days after receipt of the application by the Agency of the reasons the application is incomplete.

(b) When an application is disapproved, the written notification to the lender will state the reasons for disapproval and appropriate appeal rights will be provided.

§§ 4279.167 - 4279.172 [Reserved]

§ 4279.173 Loan approval and obligating funds.

(a) Upon approval of a loan guarantee, the Agency will issue a Conditional Commitment to the lender containing conditions under which a Loan Note Guarantee will be issued.

(b) If certain conditions of the Conditional Commitment cannot be met, the lender and applicant may propose alternate conditions. Within the requirements of the applicable regulations and instructions and prudent lending practices, the Agency may negotiate with the lender and the applicant regarding any proposed changes to the Conditional Commitment.

(c) The Conditional Commitment is a key processing step in the B&I process. You should make sure that the lender knows each condition of the guarantee listed in the commitment. You should tailor each Conditional Commitment to the project and go over each item in person with the lender's loan officers. All required measures identified in the Agency's environmental impact analysis for this proposal and established for the purpose of avoiding or reducing adverse environmental impacts of the proposal's construction or operation must be listed in the Conditional Commitment and understood by both the lender and the borrower. Most Conditional Commitment items should be incorporated into the Loan Agreement.

(d) Make sure that the lender understands that the Agency expects strong servicing of the loan and that the Agency will, except in the case of delinquencies and liquidations, play a very minimal servicing role. The lender should service the loan the way it does any loan in its portfolio. Make new lenders aware of the ramifications of negligent servicing.

(e) On loan applications within the State Director's loan approval authority, the State Director will submit to the National Office, Attn: Director, Business Programs Processing Division, the following information within 30 days after the Form 4279-3, "Conditional Commitment," has been accepted:

§ 4279.173(e) (Con.)

- (1) A copy of Form 4279-3, "Conditional Commitment," as accepted by the lender and borrower.
- (2) A copy of the State loan committee minutes, if available.
- (3) A copy of the lender's credit analysis, financials, appraisals, etc.
- (4) A copy of the proposed Loan Agreement between the lender and the borrower.
- (5) When debt refinancing is involved, a copy of the justification for refinancing.
- (6) The cover memorandum must indicate whether Form 4279-5, "Loan Note Guarantee," has been issued. If the Loan Note Guarantee has been issued, enclose a copy of the Lender Certification required by § 4279.181 of this subpart, and if not, a proposed date for issuance of the Loan Note Guarantee.

§ 4279.174 Transfer of lenders.

(a) The loan approval official may approve the substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment when the Loan Note Guarantee has not yet been issued provided, that there are no changes in the borrower's ownership or control, loan purposes, or scope of project and loan conditions in the Conditional Commitment and the Loan Agreement remain the same.

(b) The new lender's servicing capability, eligibility, and experience will be analyzed by the Agency prior to approval of the substitution. The original lender will provide the Agency with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender must execute a new part B of Form 4279-1.

§§ 4279.175 - 4279.179 [Reserved]**§ 4279.180 Changes in borrower.**

Any changes in borrower ownership or organization prior to the issuance of the Loan Note Guarantee must meet the eligibility requirements of the program and be approved by the Agency loan approval official.

§ 4279.181 Conditions precedent to issuance of Loan Note Guarantee.

The Loan Note Guarantee will not be issued until the lender, including a CLP lender, certifies to the following:

- (a) No major changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment, unless such changes have been approved by the Agency.
- (b) All planned property acquisition has been or will be completed, all development has been or will be substantially completed in accordance with plans and specifications, conforms with applicable Federal, state, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.
- (c) Required hazard, flood, liability, worker compensation, and personal life insurance, when required, are in effect.
- (d) Truth-in-lending requirements have been met.
- (e) All equal credit opportunity requirements have been met.
- (f) The loan has been properly closed, and the required security instruments have been obtained or will be obtained on any acquired property that cannot be covered initially under State law.
- (g) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and to any other exceptions approved in writing by the Agency.
- (h) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended period of time.
- (i) When required, personal, partnership, or corporate guarantees have been obtained.
- (j) All other requirements of the Conditional Commitment have been met.
- (k) Lien priorities are consistent with the requirements of the Conditional Commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, or other parties have been or will be filed against the collateral and no suits are pending or threatened that would adversely affect the collateral when the security instruments are filed.

§ 4279.181 (Con.)

(l) The loan proceeds have been or will be disbursed for purposes and in amounts consistent with the Conditional Commitment and Form 4279-1. A copy of the detailed loan settlement of the lender must be attached to support this certification.

(m) There has been neither any material adverse change in the borrower's financial condition nor any other material adverse change in the borrower, for any reason, during the period of time from the Agency's issuance of the Conditional Commitment to issuance of the Loan Note Guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control. The lender must address any assumptions or reservations in the requirement and must address all adverse changes of the borrower, any parent, affiliate, or subsidiary of the borrower, and guarantors.

(n) None of the lender's officers, directors, stockholders, or other owners (except stockholders in an institution that has normal stockshare requirements for participation) has a substantial financial interest in the borrower and neither the borrower nor its officers, directors, stockholders, or other owners has a substantial financial interest in the lender. If the borrower is a member of the board of directors or an officer of a Farm Credit System (FCS) institution that is the lender, the lender will certify that an FCS institution on the next highest level will independently process the loan request and act as the lender's agent in servicing the account.

(o) The Loan Agreement includes all measures identified in the Agency's environmental impact analysis for this proposal (measures with which the borrower must comply) for the purpose of avoiding or reducing adverse environmental impacts of the proposal's construction or operation.

(p) For projects other than turnkey operations where the Loan Note Guarantee will be issued at the time of loan closing, there are added risks to the Agency. During the review, the Agency should consider the added risk associated with issuing the Loan Note Guarantee prior to the substantial completion of the project. When negotiating the percent of guarantee with the lender, these risks should be considered in conjunction with the credit risks and the lender's experience in financing the type of project.

§§ 4279.182 - 4279.185 [Reserved]

§ 4279.186 Issuance of the guarantee.

(a) When loan closing plans are established, the lender will notify the Agency. Coincident with, or immediately after loan closing, the lender will provide the following to the Agency:

(1) Lender's certifications as required by § 4279.181 of this subpart.

(2) Executed Lender's Agreement.

(3) Form RD 1980-19, "Guaranteed Loan Closing Report," and appropriate guarantee fee.

(b) When the Agency is satisfied that all conditions for the guarantee have been met, the Loan Note Guarantee and the following documents, as appropriate, will be issued:

(1) Assignment Guarantee Agreement. In the event the lender uses the single note option and assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency will execute the Assignment Guarantee Agreement; and

(2) Certificate of Incumbency. If requested by the lender, the Agency will provide the lender with a certification on Form 4279-7, "Certificate of Incumbency and Signature (Business and Industry)," of the signature and title of the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement. Form 4279-7 will be signed by the supervisor of the Agency official who signs the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement.

(c) The Agency may, at its discretion, request copies of loan documents for its file.

(d) There may be instances when not all of the working capital has been disbursed, and it appears practical to disburse the balance over a period of time. The State Director, after review of a disbursement plan, may amend the Conditional Commitment in accordance with the disbursement plan and issue the guarantee.

§ 4279.187 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, the Agency will promptly inform the lender of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender requests additional time in writing and within the period allowed, the Agency may grant the request. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

§§ 4279.188 - 4279.199 [Reserved]**§ 4279.200 OMB control number.**

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575-0170. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 54 hours per response, with an average of 27 hours per response, including time for reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, D.C. 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Attachments: Appendices A, B, C, and D.

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Guide for Completion of Feasibility Studies

A feasibility study by a recognized independent consultant may be required by the Agency for start-up businesses or existing businesses when the project will significantly affect the borrower's financial operations. An acceptable feasibility study should include, but not be limited to:

(a) Economic feasibility. Information related to the project site; availability of trained or trainable labor; utilities; rail, air, and road service to the site; and the overall economic impact of the project.

(b) Market feasibility. Information on the sales organization and management, nature and extent of market and market area, marketing plans for sale of projected output, extent of competition, and commitments from customers or brokers.

(c) Technical feasibility. Technical feasibility reports shall be prepared by individuals who have previous experience in the design and analysis of similar facilities or processes proposed in the application. The technical feasibility reports shall address the suitability of the selected site for the intended use including an environmental impact analysis. The report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income or production that are projected in the financial statements. The report shall also identify any constraints or limitations in these financial projections and any other facility or design-related factors which might affect the success of the enterprise. The report shall also identify and estimate project operating and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based. For the purpose of the technical feasibility reports, the project engineer or architect may be considered an independent party provided neither the principals of the firm nor any individual of the firm who participates in the technical feasibility report has a financial interest in the project, and provided further that no other individual or firm with the expertise necessary to make such a determination is reasonably available to perform the function.

(d) Financial feasibility. An opinion on the reliability of the financial projections and the ability of the business to achieve the projected income and cash flow. An assessment of the cost accounting system, the availability of short-term credit for seasonal business, and the adequacy of raw materials and supplies.

(e) Management feasibility. Evidence that continuity and adequacy of management has been evaluated and documented as being satisfactory.

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(12-23-96) SPECIAL PN

Guide for Sale or Structure of Guaranteed Loans

A. Methods of structuring loans.

(1) Treat the entire financial package of the borrower as one loan. Loan purposes may include one or any combination of working capital, machinery and equipment, real estate, etc.

(i) The loan must be amortized to provide repayment within the time limits established by Agency regulations.

(ii) One interest rate may be used for the entire loan or one interest rate on the unguaranteed portion and a lower interest rate on the guaranteed portion. A combination of fixed and variable rates will be allowed only when the guaranteed portion is the fixed rate.

(2) Treat the financial package of the borrower as separate loans that are processed as a single application.

(i) A separate loan is made for each term. For example, an approved application could include provisions for working capital and real estate. One loan for the working capital could be amortized over 7 years with another loan for the real estate amortized over 30 years.

(ii) Separate Form 4279-3, "Conditional Commitment," and Forms RD 1940-3, "Request for Obligation of Funds - Guaranteed Loans," and RD 1980-19, "Guaranteed Loan Closing Report," are required for each loan.

B. Methods for structuring notes for sale. Sale or assignment of the guaranteed portion of the loan must be in compliance with Agency regulations. The loan may be structured as follows:

(1) Single note system. The entire loan is evidenced by one note and one Loan Note Guarantee is issued. The lender may assign all or part of the guaranteed portion of the loan to one or more holders by using the Agency's Assignment Guarantee Agreement. The holder, upon written notice to the lender and the Agency, may reassign the unguaranteed portion of the loan sold under the Assignment Guarantee Agreement. Upon notice to the Agency and completion of the assignment through the use of Form 4279-6, "Assignment Guarantee Agreement (Business and Industry)," the assignee shall succeed to all rights and obligations of the holder thereunder. If this option is selected, the lender may not at a later date cause any additional notes to be issued.

Guide for Sal(2) Multinote system. Under this option the lender may provide for one note for the unguaranteed portion of the loan and no more than 10 notes for the guaranteed portion. When this option is selected by the lender, upon disposition the holder will receive one of the borrower's executed notes and a Loan Note Guarantee. The Agency will issue a Loan Note Guarantee for each note, including the unguaranteed note, to be attached to the note. An Assignment Guarantee Agreement will never be used when the multinote option is utilized.

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*BUSINESS AND INDUSTRY
APPLICATION PRIORITY POINTS SCORING*

Name _____ Date: _____

State _____

List the maximum points the applicant is eligible for under each category. See § 4279.155 of this subpart for information on how to determine points.

1. Population priority.

Located in an unincorporated area or in a city with under 25,000 population. (10 points) _____

2. Community priority.

A. Located in an eligible area of long term population decline and job deterioration based on reliable statistical data. (5 points) _____

B. Located in a rural community that has remained persistently poor over the last 60 years. (5 points) _____

C. Located in a rural community that is experiencing trauma as the result of a natural disaster or experiencing fundamental structural changes in its economic base. (5 points) _____

D. Located in a city or county with an unemployment rate 125 percent of the statewide rate or greater. (5 points) _____

3. Empowerment Zone/Enterprise Community (EZ/EC). (Cannot exceed a total of 10 points).

A. Located in EZ/EC designated area. (10 points) _____

B. Located in a non-designated EZ/EC applicant community. (5 points) _____

4. Loan features.

A. Lender will price the loan at the Wall Street Journal published Prime Rate plus 1.5 percent or less. (5 points) _____

B. Lender will price the loan at the Wall Street Journal published Prime Rate plus 1 percent or less. (5 points) _____

C. The Agency guaranteed loan is less than 50 percent of project cost. (5 points) _____

D. Percentage of guarantee is 10 or more percentage points less than the maximum allowable for a loan of its size. (5 points) _____

5. High impact business investment priorities (Total score for the following three categories:

A. Industry.

(i) Industry that has 20 percent or more of its sales in international attractions. (5 points) _____

(ii) Industry that is not already present in the community. (5 points) _____

B. Business.

(i) Business that offers high value, specialized products and services that command high prices. (2 points) _____

(ii) Business that provides an additional market for existing local businesses. (3 points) _____

(iii) Business that is locally owned and managed. (3 points) _____

(iv) Business that will produce a natural resource value-added product. (2 points) _____

C. Occupations (Cannot exceed 10 points).

(i) Business that creates jobs with an average wage exceeding 125 percent of the Federal minimum wage.
(5 points) _____

(ii) Business that creates jobs with an average wage exceeding 150 percent of the Federal minimum wage.
(10 points) _____

6. State Director's administrative points: (May be up to 10 points). Attach justification. _____

Total points _____

Signature

Date

Title

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BUSINESS AND INDUSTRY LOAN PROCESSING CHECKLIST

Borrower _____ State _____

Phone # _____

Lender _____ Type of Project _____

Purpose _____

LOAN PROCESSING

DOCUMENT	FORM NO.	TO BE PREPARED BY	TARGET DATE	DATE	RECD
Application for Loan	4279-1				
Guarantee (Business and Industry)	Part A Part B Part C				
Site Visit Report					
Business and Industry Application Priority Points Score sheet	Appendix C RD Instruc- tion 4279-B				
Request for Environmental Information	RD 1940-20				
Environmental Assessment for Class I Action	RD 1940-21				
Environmental Assessment for Class II Action	Exhibit H RD Instruc- tion 1940-G				
Environmental Checklist for Categorical Exclusions	RD 1940-22				
Civil Rights Impact Analysis Certification	RD 2006-38				

LOAN PROCESSING (CONTINUED)

DOCUMENT	FORM NO.	TO BE PREPARED BY	TARGET DATE	DATE	REC'D
Certification of Non-Relocation and Market and Capacity Information Report	4279-2				
Intergovernmental Consultation Comments					
Financial Statements for past 3 years					
Balance Sheet & Profit & Loss Statement					
2 years of Projected Financial Statements					
Pro-forma Balance Sheet & Profit and Loss Statement					
Guarantor's Financial Statements					
Copy of Lender's Loan Analysis					
Credit Reports					
Business Personal					
Interim Financial Statements					
Feasibility Study or Business Plan					

LOAN PROCESSING (CONTINUED)

DOCUMENT	FORM	TO BE NO.	TARGET PREPARED BY	DATE	REC'D
Appraisals					
Real Property- General Real Property Appraiser Certification					
Lender's Proposed Loan Agreement					
Securities & Exchange Commission Report					
Conditional Commitment		4279-3			
State Loan Committee Minutes					
State Director's Cover memorandum to National Office					
Project Announcement to Congressional Liaison		Exhibit B of RD Instruc- tion 2015-C			
Request for Obligation of Funds Guaranteed Loans		RD 1940-3			

LOAN CLOSING

DOCUMENT	FORM	TO BE NO.	TARGET PREPARED BY	DATE	REC'D
Lender Certification §4279.181 of this subpart					
No major changes					
Planned acquisitions and development complete					
Required insurance in effect					
Truth in Lending					
Equal credit opportunity requirements met					
Loan properly closed					
Marketable title to all collateral					
Entire loan advanced					
Personal/corporate guarantees obtained					
All requirements of the Conditional Commitment are met					
Required liens obtained					
Loan proceeds advanced for approved purposes					
No adverse change in borrower					

LOAN CLOSING (CONTINUED)

DOCUMENT	FORM	TO BE NO.	TARGET PREPARED BY	DATE	REC'D
Loan Settlement Statement					
Promissory Note					
Security Documents					
Current financial statement obtained					
Guaranteed Loan Closing Report	RD 1980-19				
Lender's Agreement (Business and Industry)	4279-4				
Loan Note Guarantee (Business and Industry)	4279-5				
Assignment Guarantee Agreement (Business and Industry)	4279-6				

Note: The above are nationwide requirements and may be supplemented as needed to meet State needs.

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PART 4287 - SERVICING

Subpart B - Servicing Business and Industry Guaranteed Loans

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Appendix A - Modification or Administrative Action
Appendix B - Business and Industry Guaranteed Loan
Final Loss Settlement Checklist

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PART 4287 - SERVICING

Subpart B - Servicing Business and Industry Guaranteed Loans

§ 4287.101 Introduction.

(a) This subpart supplements part 4279, subparts A and B, by providing additional requirements and instructions for servicing and liquidating all Business and Industry (B&I) Guaranteed Loans. This includes Drought and Disaster (D&D), Disaster Assistance for Rural Business Enterprises (DARBE), and Business and Industry Disaster (BID) loans.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any preference or priority over the guaranteed portion of the loan.

(c) Copies of all forms, regulations, and Instructions referenced in this subpart are available in any Agency office. Whenever a form is designated in this subpart, that designation includes predecessor and successor forms, if applicable, as specified by the field or National Office. Any portion of this Instruction appearing in italicized type is considered by the Agency to be administrative procedure and has not been published as part of the regulation in the Federal Register.

§ 4287.102 Definitions.

The definitions and abbreviations contained in § 4279.2 of subpart A of part 4279 of this chapter apply to this subpart.

§ 4287.103 Exception authority.

Section 4279.15 of subpart A of part 4279 of this chapter applies to this subpart.

§§ 4287.104 - 4287.105 [Reserved]

§ 4287.106 Appeals.

Section 4279.16 of subpart A of part 4279 of this chapter applies to this subpart.

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Guaranteed Loan Servicing

§ 4287.107 Routine servicing.

The lender is responsible for servicing the entire loan and for taking all servicing actions that a prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The Loan Note Guarantee is unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security interest regardless of the time at which the Agency acquires knowledge of the foregoing. This responsibility includes but is not limited to the collection of payments, obtaining compliance with the covenants and provisions in the Loan Agreement, obtaining and analyzing financial statements, checking on payment of taxes and insurance premiums, and maintaining liens on collateral. *The State Director has the primary responsibility for ensuring that the lender is servicing the loan in a prudent manner as required by the Lender's Agreement, the regulations governing the program, and loan documents. Loan servicing is intended to be preventive rather than curative. Prompt followup on delinquent accounts and early recognition of and pursuing a solution to potential problems are keys to resolving many problem accounts. The lender should be immediately notified in writing when the Agency suspects noncompliance with the legal instruments governing the loan. The Regional Inspector General for Investigations, U.S. Department of Agriculture (USDA), should be contacted when fraud is suspected. All servicing actions that are submitted to the National Office must be sent in the format set forth in appendix A of this subpart.*

(a) **Lender reports** The lender must report the outstanding principal and interest balance on each guaranteed loan semiannually using Form RD 1980-41, "Guaranteed Loan Status Report."

(b) **Loan classification** Within 90 days of receipt of the Loan Note Guarantee, the lender must notify the Agency of the loan's classification or rating under its regulatory standards. Should the classification be changed at a future time, the Agency must be notified immediately. The Agency is required to classify all B&I loans within the B&I portfolio. The Agency will classify B&I loans within 30 days of receiving the lender's classification in accordance with the internal system on the Rural Community Facilities Tracking System (RCFTS). When the lender uses a classification system different than the internal system used in RCFTS, the Agency will convert the lender's classification to a corresponding RCFTS classification for data entry.

(c) **Agency and lender conference** At the Agency's request, the lender will meet with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced. The Agency will hold meetings with the lender at least annually. The Agency, at a minimum, will remind the lender of its

§ 4287.107(c) (Con.)

servicing responsibilities under the Lender's Agreement during the field visit, review the lender's latest financial analysis, and check the loan classification. It is suggested that the application of loan payments also be reviewed.

- (1) Prepare for the visit by reviewing the previous field visit reports.*
- (2) Coordinate the visit with the lender.*
- (3) Before the visit, discuss with the lender the borrower's financial reporting and review the lender's analysis of the reports.*
- (4) Check the condition of the business premises and the collateral and observe how the borrower is maintaining and utilizing the equipment.*
- (5) Check for potential hazardous contamination.*
- (6) Determine the economic impact of the B&I program.*
- (7) Document the findings in written correspondence with the lender.*

(d) Financial reports The lender must obtain and forward to the Agency the financial statements required by the Loan Agreement. The lender must submit annual financial statements to the Agency within 120 days of the end of the borrower's fiscal year. The lender must analyze the financial statements and provide the Agency with a written summary of the lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Spreadsheets of the new financial statements must also be included. The State Director should handle public body financial reporting requirements generally the same as for Community Programs. Office of Management and Budget (OMB) Circular A-128 requires an audit for the fiscal year in which the Loan Note Guarantee was issued. OMB Circular A-133 applies to nonprofits.

(e) Additional expenditures The lender will not make additional loans to the borrower without first obtaining the prior written approval of the Agency, even though such loans will not be guaranteed.

(f) Borrower visits Periodic borrower visits should be coordinated whenever possible with the lender. It is strongly encouraged that the lender accompany the Agency on all borrower visits. Borrower visits

RD Instruction 4287-B
§ 4279.107(f) (Con.)

should be scheduled during the first year of operation after issuance of the Loan Note Guarantee. For all current borrowers, a field visit should be done at least once every 3 years. Problem accounts should be visited as frequently as the Agency deems necessary. Field visits should be documented on Form 4279-15, "Business and Industry Field Office Review," or a similar format.

(g) State Office reports. All problem loans that are in excess of the State's loan servicing authority, all delinquent loans, and any loans in bankruptcy will be reported on a quarterly basis to the National Office using Form 4279-16, "Quarterly Delinquent/Problem Loan Report (Business and Industry)."

§§ 4287.108 - 4287.111 [Reserved]

§ 4287.112 Interest rate adjustments.

(a) Reductions. The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. The Agency must be notified by the lender, in writing, within 10 calendar days of the change. If any of the guaranteed portion has been purchased by the Agency, then the Agency will affirm or reject interest rate change proposals in writing. The Agency will concur in such interest-rate changes only when it is demonstrated to the Agency that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state.

(1) Fixed rates can be changed to variable rates to reduce the borrower's interest rate only when the variable rate has a ceiling which is less than or equal to the original fixed rate.

(2) Variable rates can be changed to a fixed rate which is at or below the current variable rate.

(3) The interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by § 4279.125 of subpart B of part 4279.

(4) The lender is responsible for the legal documentation of interest-rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new notes may be issued. Copies of all legal documents must be provided to the Agency.

(5) Factors which will be considered in making such determinations include whether:

§ 4287.112(a)(5) (Con.)

(i) continuing with the loan would realistically promote or enhance rural development and employment in rural areas;

(ii) recovery is maximized and the monetary recovery would be increased by proceeding immediately to liquidation (if applicable) or allowing the borrower to continue at a reduced interest rate; and

(iii) an in-depth financial analysis by the lender reasonably indicates that the business would be successful at a lower interest rate and reasonably indicates that the borrower could make the reduced payment and pay off amounts in arrears, if any.

(6) The State Director will notify the Finance Office of any interest-rate change by using Form RD 1980-47, "Guaranteed Loan Borrower Adjustments," make corrections to RCFTS reflecting the change, and document the loan file to reflect the change. A system must be established to monitor the receipt from the lender of interest-rate changes and the effective date of change on all guaranteed loans where the Agency is the holder or where other circumstances might dictate a change in the interest rate at some point in the future.

(b) **Increases.** No increases in interest rates will be permitted except the normal fluctuations in approved variable interest rates unless a temporary interest-rate reduction occurred.

§ 4287.113 Release of collateral.

(a) All releases of collateral with a value exceeding \$100,000 must be supported by a current appraisal on the collateral released. The appraisal will be at the expense of the borrower and must meet the requirements of § 4279.144 of subpart B of part 4279 of this chapter. The remaining collateral must be sufficient to provide for repayment of the Agency's guaranteed loan. The Agency may, at its discretion, require an appraisal of the remaining collateral in cases where it is determined that the Agency may be adversely affected by the release of collateral. Sale of release of collateral must be based on an arm's-length transaction. There must be adequate consideration for release of collateral and such release may include, but is not limited to:

(1) Application of the net proceeds from the sale of collateral to the borrower's debts in order of lien priority (Application of sale

RD Instruction 4287-B
§ 4287.113(a)(1) (Con.)

proceeds to the Agency guaranteed debt must be in inverse order of maturity);

(2) Use of the net proceeds from the sale of collateral to purchase other collateral of equal or greater value for which the lender will obtain for the benefit of the guaranteed loan a lien position equal or superior to the position previously held;

(3) Application of the net proceeds from the sale of collateral to the borrower's business operation in such a manner that a significant enhancement of the borrower's debt service ability will be clearly demonstrated. (The lender's written request must detail how the borrower's debt service ability will be enhanced); or

(4) Assurance that the release of collateral is essential for the success of the business, thereby furthering the goals of the B&I program. Such assurance must be supported by written documentation from the lender.

(b) Within the parameters of paragraph (a) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral.

(c) Within the parameters of paragraph (a) of this section, release of collateral with a cumulative value in excess of 20 percent of the original loan or when the proceeds will not be used to reduce the guaranteed loan or to buy replacement collateral must be requested in writing by the lender and concurred in by the Agency in writing in advance of the release. A written evaluation will be completed by the lender to justify the release.

(d) Government officers are neither authorized to modify the terms of a contract by the supplemental or substitute agreement if such modifications are prejudicial to the interest of the United States nor are they authorized to give away the property or claim of the Government.

§§ 4287.114 - 4287.122 [Reserved]

§ 4287.123 Subordination of lien position.

A subordination of the lender's lien position must be requested in writing by the lender and concurred in by the Agency in writing in advance of the subordination. The subordination must enhance the borrower's business,

§ 4287.123 (Con.)

and the Agency's interest. After the subordination, collateral must be adequate to secure the loan. The lien to which the guaranteed loan is subordinated must be for a fixed dollar limit and fixed or limited term, after which the guaranteed loan lien priority will be restored. Subordination to a revolving line of credit will not exceed 1 year. There must be adequate consideration for the subordination. *A subordination is considered a servicing action requiring the appropriate environmental review by the Agency in accordance with subpart G of part 1940.*

§ 4287.124 Alterations of loan instruments.

The lender shall neither alter nor approve any alterations of any loan instrument without the prior written approval of the Agency. *The State Director will consult with the Regional Attorney and, if necessary, the National Office for additional guidance.*

§§ 4287.125 - 4287.133 [Reserved]

§ 4287.134 Transfer and assumption.

(a) Documentation of request All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with subpart B of part 4279 of this chapter. An individual credit report must be provided for transferee proprietors, partners, officers, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility. Although a transfer and assumption is normally considered loan servicing, it should be processed in the same manner as a new loan.

(b) Terms. Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors) if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by § 4279.126 of subpart B of part 4279 of this chapter. The lender's request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms. *(The maximum terms authorized by § 4279.126 of subpart B of part 4279 may be considered when new terms are being offered.)*

(c) Release of liability The transferor, including any guarantor, may be released from liability only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan being assumed and is supported by a current appraisal and a current financial statement. The Agency will

not pay for the appraisal. If the transfer is for less than the debt, the lender must demonstrate to the Agency that the transferor and guarantors have no reasonable debt-paying ability considering their assets and income in the foreseeable future.

(d) Proceeds. Any proceeds received from the sale of collateral before a transfer and assumption will be credited to the transferor's guaranteed loan debt in inverse order of maturity before the transfer and assumption are closed.

(e) Additional loans. Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under subpart B of part 4279 of this chapter.

(f) Credit quality. The lender must make a complete credit analysis which is subject to Agency review and approval.

(g) Documents. Prior to Agency approval, the lender must advise the Agency, in writing, that the transaction can be properly and legally transferred, and the conveyance instruments will be filed, registered, or recorded as appropriate.

(1) The assumption will be done on the lender's form of assumption agreement and will contain the Agency case number of the transferor and transferee. The lender will provide the Agency with a copy of the transfer and assumption agreement. The lender must ensure that all transfers and assumptions are noted on all original Loan Note Guarantees.

(2) A new Loan Agreement, consistent in principle with the original Loan Agreement, should be executed to establish the terms and conditions of the loan being assumed. An assumption agreement can be used to establish the loan covenants.

(3) The lender will provide to the Agency a written certification that the transfer and assumption is valid, enforceable, and complies with all Agency regulations.

(h) Loss resulting from transfer. If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file an estimated report of loss to recover its pro rata share of the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with § 4279.78(c) of subpart A of part 4279.

§ 4287.134(h) (Con.)

In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption will be included in the calculations.

(i) Related party. If the transferor and transferee are affiliated or related parties, any transfer and assumption must be for the full amount of the debt.

(j) Payment requests. Requests for a loan guarantee to provide equity for a transfer and assumption must be considered as a new loan under subpart B of part 4279.

(k) Cash downpayment. When the transferee will be making a cash downpayment as part of the transfer and assumption:

(1) The lender must have an appropriate appraiser, acceptable to both the transferee and transferor and currently authorized to perform appraisals, determine the value of the collateral securing the loan. The appraisal fee and any other costs will not be paid by the Agency.

(2) The market value of the collateral, plus any additional property the transferee proposes to offer as collateral, must be adequate to secure the balance of the guaranteed loans.

(3) Cash downpayments may be paid directly to the transferor provided:

(i) The lender recommends that the cash be released, and the Agency concurs prior to the transaction being completed. The lender may wish to require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed;

(ii) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness;

(iii) Any payments by the transferee to the transferor will not suspend the transferee's obligations to continue to meet the guaranteed loan payments as they come due under the terms of the assumption; and

(iv) The transferor agrees not to take any action against the transferee in connection with the assumption without prior written approval of the lender and the Agency.

(1) Transfer and assumption options

- (1) Transfer the total indebtedness on the same terms.
- (2) Transfer the total indebtedness on different terms.
- (3) Transfer for less than all of the debt on the same terms.
- (4) Transfer for less than all of the debt on different terms.

(m) Bankruptcy. The bankruptcy court does not have any jurisdiction to require a lender to accept another debtor or to transfer a loan to another entity. In such a case, contact your Regional Attorney immediately.

(n) Approval. The Agency will handle a transfer and assumption as a new loan, and the transfer and assumption must be approved by the State Director within the position's loan approval authority. If there will be a loss or if the guaranteed loan balance is in excess of the State Director's loan approval authority, the request must be submitted to the National Office for review and concurrence. The Regional Attorney will review all legal instruments used in the transfer and assumption prior to the transaction being consummated. A copy of the assumption agreement must be placed in the case file. The Finance Office must be notified and the following information should be transmitted to the Finance Office:

- (1) Form RD 1980-7, "Notification of Transfer and Assumption of a Guaranteed Loan;"
- (2) Form RD 1980-50, "Add, Delete, or Change Guaranteed Loan Borrower Information;" and
- (3) Form RD 1980-51, "Add, Change or Delete Guaranteed Loan Record," for the transferee.

(o) Environmental. Transfers and assumptions are considered servicing actions requiring the appropriate environmental review by the Agency in accordance with subpart G of part 1940.

§ 4287.135 Substitution of lender.

After the issuance of a Loan Note Guarantee, the lender shall not sell or transfer the entire loan without the prior written approval of the Agency. The Agency will not pay any loss or share in any costs (i.e., appraisal fees, environmental studies, or other costs associated with servicing or liquidating the loan) with a new lender unless a relationship is established through a substitution of lender in accordance with paragraph (a) of this section. This includes cases where the lender has failed and been taken over by a regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another lender.

(a) The Agency may approve the substitution of a new lender if:

(1) the proposed substitute lender:

(i) is an eligible lender in accordance with § 4279.29 of subpart A of part 4279;

(ii) is able to service the loan in accordance with the original loan documents; and

(iii) agrees in writing to acquire title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

(2) the substitution of the lender is requested in writing by the borrower, the proposed substitute lender, and the original lender if still in existence.

(b) Where the lender has failed and been taken over by FDIC and the guaranteed loan is liquidated by FDIC rather than being sold to another lender, the Agency will pay losses and share in costs as if FDIC were an approved substitute lender.

(c) The Regional Attorney should be requested to review the proposed substitution documents to ascertain that the documents will comply with all legal requirements. State Directors may approve a substitution of lender for loans where the outstanding loan balance is within the State's delegated servicing authority.

(d) RCFTS should be updated to reflect the change, and the Finance Office should be notified using Form RD 1980-42, "Notice of Substitution of Lender."

§ 4287.136 Lender failure.

For financial institutions that have failed, the following procedure should be followed:

(a) Uninsured lender. When an uninsured lender with an Agency guaranteed loan fails, the Agency must notify both the National Office and the Regional Attorney, in writing, at once. The Agency will likely be dealing with a bankruptcy situation where the receiver will control any B&I Guaranteed Loan and sell it as part of the liquidation process. These are lengthy, complicated affairs and the Agency needs to keep track of the B&I Guaranteed Loan and monitor the bankruptcy progress. The Agency should make any successor to the failed institution aware that the lender or insuring agency cannot arbitrarily change the Lender's Agreement and related documents on the guaranteed loan.

(b) Insured lender. When an insured lender fails, its assets, including its loans, are normally taken over by the insuring agency such as the FDIC. The B&I Guaranteed Loan will usually be acquired by either the insuring agency or a private institution.

(1) Initial action. As soon as the Agency becomes aware that a lender has failed, the Agency should contact the FDIC office (if there is one) or the State agency servicing the lender's area at once. The Agency should brief the FDIC or State agency on the requirements contained in the Lender's Agreement as well as any other Agency regulations that apply. The Regional Attorney should be contacted for legal advice, including determining the time period established by applicable law in which a proof of claim can be filed.

(2) Recovery by the Agency. When the Agency has repurchased the guaranteed portion of the loan, the lender has failed, and the Agency suspects that the guarantee is unenforceable due to negligent servicing, unauthorized use of loan funds, fraud, or misrepresentation by the lender.

(i) Involve the National Office and Regional Attorney as soon as it is suspected that the Loan Note Guarantee may be unenforceable.

(ii) Determine and document the exact amount of loss paid by the Agency as a result of negligent servicing.

§ 4287.136(b)(2) (Con.)

(iii) Locate the name and address of the insurance company covering the failed institution and its officers for errors and omissions. The Agency loan officer should contact the Regional Attorney to structure a demand letter for payment of the loss associated with the negligence.

(iv) If the financial institution has been taken over by a Federal or State regulatory agency, the Agency should request settlement of the loss from the assets of the failed institution by filing a timely proof of claim.

(v) If the failed institution's operations and the Agency guaranteed loan were sold to another institution, with the concurrence of the Regional Attorney and the National Office, a timely appropriate demand for payment should be made from the new entity. A detailed analysis substantiated with any supporting documents should accompany the demand for payment within the time constraints established by law.

(vi) Should the demand on the successor financial institution be denied, the Agency should obtain the documented reasons in writing. The Regional Attorney should be consulted to prepare the rebuttal and request for reconsideration of payment.

§§ 4287.137 - 4287.144 [Reserved]

§ 4287.145 Default by borrower.

(a) The lender must notify the Agency when a borrower is 30 days past due on a payment or is otherwise in default of the Loan Agreement. Form RD 1980-44, "Guaranteed Loan Borrower Default Status," will be used and the lender will continue to submit this form bimonthly until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender will arrange a meeting with the Agency and the borrower to resolve the problem.

(b) In considering options, the prospects for providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective.

(1) Curative actions include but are not limited to

(i) deferment of principal (subject to rights of any holder);

(ii) an additional unguaranteed temporary loan by the lender to bring the account current;

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- (iii) reamortization of or rescheduling the payments on the loan (subject to rights of any holder);
- (iv) transfer and assumption of the loan in accordance with § 4287.134 of this subpart;
- (v) reorganization;
- (vi) liquidation;
- (vii) subsequent loan guarantees; and
- (viii) changes in interest rates with the Agency's, the lender's, and the holder's approval, provided that the interest rate is adjusted proportionately between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

(2) In the event a deferment, rescheduling, reamortization, or moratorium is accomplished, it will be limited to the remaining life of the collateral or remaining limits as contained in § 4279.126 of subpart B of part 4279 of this chapter whichever is less.

(c) Any fully justified rescheduled, deferred, or reamortized loan which meets the revised performance agreed to by the lender and the Agency will no longer be classified as delinquent but should be considered a problem loan for a reasonable period of time and watched closely. The Agency will notify the Finance Office, in writing, of any changes in payment terms (interest-rate adjustment and reamortizations) as well as the effective dates of such changes.

§§ 4286.146 - 4287.155 [Reserved]

§ 4287.156 Protective advances.

Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, will not, or cannot meet its obligations. Sound judgment must be exercised in determining that the protective advance preserves collateral and recovery is actually enhanced by making the advance. Protective advances will not be made in lieu of additional loans.

(a) The maximum loss to be paid by the Agency will never exceed the original principal plus accrued interest regardless of any protective advances made.

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(b) Protective advances and interest thereon at the note rate will be guaranteed at the same percentage of loss as provided in the Loan Note Guarantee.

(c) Protective advances must constitute an indebtedness of the borrower to the lender and be secured by the security instruments. Agency written authorization is required when cumulative protective advances exceed \$5,000.

§ 4287.157 Liquidation.

In the event of one or more incidents of default or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, liquidation may be considered. If the lender concludes that liquidation is necessary, it must request the Agency's concurrence. The lender will liquidate the loan unless the Agency, at its option, carries out liquidation. When the decision to liquidate is made, if the loan has not already been repurchased, provisions will be made for repurchase in accordance with § 4279.78 of subpart A of part 4279.

(a) Decision to liquidate A decision to liquidate shall be made when it is determined that the default cannot be cured through actions contained in § 4287.145 of this subpart or it has been determined that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or continue with the borrower must be made as soon as possible when any of the following exist:

(1) A loan has been delinquent 90 days and the lender and borrower have not been able to cure the delinquency through one of the actions contained in § 4287.145 of this subpart.

(2) It has been determined that delaying liquidation will jeopardize full recovery on the loan.

(3) The borrower or lender has been uncooperative in resolving the problem and the Agency or the lender has reason to believe the borrower is not acting in good faith, and it would enhance the position of the guarantee to liquidate immediately.

(b) Liquidation by the Agency The Agency may require the lender to assign the security instruments to the Agency if the Agency, at its option, decides to liquidate the loan. When the Agency liquidates, reasonable liquidation expenses will be assessed against the proceeds

derived from the sale of the collateral. Form RD 1980-45, "Notice of Liquidation Responsibility," will be forwarded to the Finance Office when the Agency liquidates the loan. The State Director has no authority to exercise the option to liquidate by the Agency without National Office concurrence.

(c) Submission of liquidation plan The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed method of liquidation. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation.

(d) Lender's liquidation plan The liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(2) A full and complete list of all collateral including any personal and corporate guarantees.

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action:

(i) for acquiring and disposing of all collateral; and

(ii) to collect from guarantors.

(4) Necessary steps for preservation of the collateral.

(5) Copies of the borrower's latest available financial statements.

(6) Copies of the guarantor's latest available financial statements.

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(8) A schedule to periodically report to the Agency on the progress of liquidation.

(9) Estimated protective advance amounts with justification.

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(10) Proposed protective bid amounts on collateral to be sold at auction and a breakdown to show how the amounts were determined.

(11) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt.

(12) Legal opinions, if needed.

(13) If the outstanding balance of principal and accrued interest is less than \$200,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and accrued interest is \$200,000 or more, the lender will obtain an independent appraisal report meeting the requirements of § 4279.144 of subpart B of part 4279 on all collateral securing the loan which will reflect the fair market value and potential liquidation value. In order to formulate a liquidation plan which maximizes recovery, collateral must be evaluated for the release of hazardous substances, petroleum products, or other environmental hazards which may adversely impact the market value of the collateral. The appraisal shall consider this aspect. The independent appraiser's fee, including the cost of the environmental site assessment, will be shared equally by the Agency and the lender.

(e) Approval of liquidation plan The Agency will inform the lender in writing whether it concurs in the lender's liquidation plan within 30 days after receipt of the liquidation plan from the lender. If the Agency needs additional time to respond to the liquidation plan, it will advise the lender of a definite time for such response. Should the Agency and the lender not agree on the liquidation plan, negotiations will take place between the Agency and the lender to resolve the disagreement. When the liquidation plan is approved by the Agency, the lender will proceed expeditiously with liquidation. The liquidation plan will be approved within the State Director's delegated loan servicing authority. In the event the loan balance is in excess of the State Director's delegated authority, the liquidation plan must be forwarded to the National Office in the appropriate format identified in appendix A of this Instruction with supporting documentation for review and concurrence. The liquidation plan may be modified when conditions warrant. All modifications must be approved in writing by the Agency prior to implementation.

(1) A transfer and assumption of the borrower's operation can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(2) A protective bid may be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest. The protective bid will not exceed the amount of the loan, including expenses of foreclosure, and should be based on the liquidation value considering estimated expenses for holding and reselling the property. These expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens. *If the liquidation value is not more than the sale expenses plus any liens superior to the lien of the guaranteed loan, normally, a protective bid should not be made.*

(f) Acceleration The lender, or the Agency if it liquidates, will proceed to accelerate the indebtedness as expeditiously as possible when acceleration is necessary including giving any notices and taking any other legal actions required. A copy of the acceleration notice or other acceleration document will be sent to the Agency (or lender if the Agency liquidates). The guaranteed loan will be considered in liquidation once the loan has been accelerated and a demand for payment has been made upon the borrower.

(g) Filing an estimated loss claim When the lender is conducting the liquidation and owns any or all of the guaranteed portion of the loan, the lender will file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 days. The estimated loss payment will be based on the liquidation value of the collateral. For the purpose of reporting and loss claim computation, the lender will discontinue interest accrual on the defaulted loan in accordance with Agency procedures, and the loss claim will be promptly processed in accordance with applicable Agency regulations *as set forth in § 4279.78(b)(6) of subpart A of part 4279 of this chapter*

(h) Accounting and reports When the lender conducts liquidation, it will account for funds during the period of liquidation and will provide the Agency with reports at least quarterly on the progress of liquidation including disposition of collateral, resulting costs, and additional procedures necessary for successful completion of the liquidation.

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(i) Transmitting payments and proceeds to the Agency When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or other proceeds using Form RD 1980-43, "Lender's Guaranteed Loan Payment to FmHA."

(j) Abandonment of collateral There may be instances when the cost of liquidation would exceed the potential recovery value of the collection. The lender, with proper documentation and concurrence of the Agency, may abandon the collateral in lieu of liquidation. A proposed abandonment will be considered a servicing action requiring the appropriate environmental review by the Agency in accordance with subpart G of part 1940 of this title. Examples where abandonment may be considered include, but are not limited to:

- (1) The cost of liquidation is increased or the value of the collateral is decreased by environmental issues;
- (2) The collateral is functionally or economically obsolete;
- (3) There are superior liens held by other parties in excess of the value of the collateral;
- (4) The collateral has deteriorated; or
- (5) The collateral is specialized and there is little or no demand for it.

(k) Disposition of personal or corporate guarantees The lender should take action to maximize recovery from all collateral, including personal and corporate guarantees. The lender will seek a deficiency judgment when there is a reasonable chance of future collection of the judgment. The lender must make a decision whether or not to seek a deficiency judgment when:

- (1) a borrower voluntarily liquidates the collateral, but the sale fails to pay the guaranteed indebtedness;
- (2) the collateral is voluntarily conveyed to the lender, but the borrower and personal and corporate guarantors are not released from liability; or
- (3) a liquidation plan is being developed for forced liquidation.

(1) Compromise settlement A compromise settlement may be considered at any time.

(1) The lender and the Agency must receive complete financial information on all parties obligated for the loan and must be satisfied that the statements reflect the true and correct financial position of the debtor including all assets. Adequate consideration must be received before a release from liability is issued. Adequate consideration includes money, additional security, or other benefit to the goals and objectives of the Agency.

(2) Before a personal guarantor can be released from liability, the following factors must be considered.

(i) Cash, either lump sum or over a period of time, or other consideration offered by the guarantor;

(ii) Age and health of the guarantor;

(iii) Potential income of the guarantor;

(iv) Inheritance prospects of the guarantor;

(v) Availability of the guarantor's assets.

(vi) Possibility that the guarantor's assets have been concealed or improperly transferred; and

(vii) Effect of other guarantors on the loan. (Consent of other guarantors may be needed.)

(3) Once the Agency and the lender agree on a reasonable amount that is fair and adequate, the lender can proceed to effect the settlement compromise. Releases should not be executed until all payments or other considerations have been received by the lender and the Agency. Such cases involving fraud, negligent servicing, or misrepresentation must be reviewed by the Regional Attorney and have the concurrence of the National Office.

(4) A compromise will only be accepted if it is in the best interest of the Agency.

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(m) Bankruptcy.

(1) If a trustee is appointed by the bankruptcy court to sell the collateral, the trustee rather than the lender is responsible for the liquidation. Normally, no liquidation expenses will be incurred by the lender.

(2) Pursuit of personal and corporate guarantors who are not the borrower and not in bankruptcy is a matter outside of the jurisdiction of the court. Reasonable expenses incurred in pursuit of such guarantors would be allowable provided there was sufficient collateral sold or collections made on the loan to cover such expenses.

§ 4287.158 Determination of loss and payment.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated, unless otherwise designated as a future recovery or after settlement and compromise of all parties has been completed. The Agency will have the right to recover losses paid under the guarantee from any party which may be liable. State Directors are authorized to approve estimated and final reports of loss within the position's delegated loan servicing authority. Approval of estimated and final reports of loss that exceed the State Director's delegated loan servicing authority must be forwarded to the National Office for review and concurrence in the format set forth in appendix A of this Instruction.

(a) Report of loss form Form RD 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved by the Agency after the Agency has approved a liquidation plan.

(b) Estimated loss In accordance with the requirements of § 4287.157(g) of this subpart, an estimated loss claim based on liquidation appraisal value will be prepared and submitted by the lender.

(1) The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower from liability.

(2) An estimated loss will be applied first to reduce the principal balance on the guaranteed loan and the balance, if any, to accrued interest. Interest accrual on the defaulted loan will be discontinued.

(3) A protective advance claim will be paid only at the time of the final report of loss payment except in certain transfer and assumption situations as specified in § 4287.134 of this subpart.

(c) Final loss. Within 30 days after liquidation of all collateral, except for certain unsecured personal or corporate guarantees as provided for in this section, is completed, a final report of loss must be prepared and submitted by the lender to the Agency. The Agency will not guarantee interest beyond this 30-day period other than for the period of time it takes the Agency to process the loss claim. Before approval by the Agency of any final loss report, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender will make its records available and otherwise assist the Agency in making any investigation. The documentation accompanying the report of loss must support the amounts shown on Form RD 449-30.

(1) A determination must be made regarding the collectibility of unsecured personal and corporate guarantees. If reasonably possible, such guarantees should be promptly collected or otherwise disposed of in accordance with § 4287.157(k) of this subpart prior to completion of the final loss report. However, in the event that collection from the guarantors appears unlikely or will require a prolonged period of time, the report of loss will be filed when all other collateral has been liquidated, and unsecured personal or corporate guarantees will be treated as a future recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency. The State Office will establish a follow-up system to ensure that the lender is making reasonable collection efforts and distributing any collections properly.

(2) The lender must document that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly to the loan.

(3) The lender will show a breakdown of any protective advance amount as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made.

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(4) The lender will show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, and evidence that the amount expended was proper and that payment was actually made. The Agency should review all liquidation expenses to determine if the expenses were proper, reasonable, and in accordance with the approval given by the Agency. Liquidation expenses are recoverable only from collateral proceeds. Attorney fees may be approved as liquidation expenses provided the fees are reasonable and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house counsel.

(5) Accrued interest will be supported by documentation as to how the amount was accrued. If the interest rate was a variable rate, the lender will include documentation of changes in both the selected base rate and the loan rate.

(6) Loss payments will be paid by the Agency within 60 days after the review of the final loss report and accounting of the collateral.

(7) Should there be a circumstance where the lender cannot or will not sign a final report of loss, the State Director may complete the final report of loss and submit it to the Finance Office without the lender's signature. Before this action can be taken, all collateral must be disposed of or accounted for; there must be no evidence of fraud, misrepresentation, or negligent servicing by the lender; and all efforts to obtain the cooperation of the lender must have been exhausted and documented.

(8) Appendix B of this subpart will be completed on each final report of loss and a copy placed in the loan file.

(d) Loss limit. The amount payable by the Agency to the lender cannot exceed the limits set forth in the Loan Note Guarantee.

(e) Rent. Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(f) Liquidation costs. Liquidation costs will be deducted from the proceeds of the disposition of primary collateral. If changed circumstances after submission of the liquidation plan require a substantial revision of liquidation costs, the lender will procure the Agency's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel, and overhead.

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(g) Payment. When the Agency finds the final report of loss to be proper in all respects, it will approve Form RD 449-30 and proceed as follows:

(1) If the loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(2) If the loss is less than the estimated loss payment, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment.

(3) If the Agency has conducted the liquidation, it will pay the lender in accordance with the Loan Note Guarantee.

§§ 4287.159 - 4287.168 [Reserved]

§ 4287.169 Future recovery.

After a loan has been liquidated and a final loss has been paid by the Agency, any future funds which may be recovered by the lender will be pro rated between the Agency and the lender based on the original percentage of guarantee.

§ 4287.170 Bankruptcy.

The lender is responsible for protecting the guaranteed loan and all collateral securing the loan in bankruptcy proceedings.

(a) Lender's responsibilities It is the lender's responsibility to protect the guaranteed loan debt and all of the collateral securing it in bankruptcy proceedings. These responsibilities include, but are not limited to the following:

(1) The lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) The lender will attend and, where necessary, participate in meetings of the creditors and all court proceedings.

(3) When permitted by the Bankruptcy Code, the lender will request modification of any plan of reorganization whenever it appears that additional recoveries are likely.

(4) The Agency will be kept adequately and regularly informed in writing of all aspects of the proceedings.

§ 4287.170(a) (Con.)

(5) In a Chapter 11 reorganization, if an independent appraisal of collateral is necessary in the Agency's opinion, the Agency and the lender will share such appraisal fee equally.

(b) Reports of loss during bankruptcy When the loan is involved in reorganization proceedings, payment of loss claims may be made as provided in this section. For a liquidation proceeding, only paragraphs (b) (3) and (5) of this section are applicable.

(1) Estimated loss payments

(i) If a borrower has filed for protection under Chapter 11 of the United States Code for a reorganization (but not Chapter 13) and all or a portion of the debt has been discharged, the lender will request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the reorganization. All subsequent claims of the lender during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by the Agency, at its option, in accordance with any court-approved changes in the reorganization plan. Once the reorganization plan has been completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest-rate reduction under the terms of the reorganization plan.

(ii) The lender will use Form RD 449-30 to request an estimated loss payment and to revise any estimated loss payments during the course of the reorganization plan. The estimated loss claim, as well as any revisions to this claim, will be accompanied by documentation to support the claim.

(iii) Upon completion of a reorganization plan, the lender will complete a Form RD 1980-44 and forward this form to the Finance Office.

(2) Interest loss payments

(i) Interest losses sustained during the period of the reorganization plan will be processed in accordance with paragraph (b) (1) of this section.

(ii) Interest losses sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction which extends beyond the period of the reorganization plan.

(iii) If an estimated loss claim is paid during the operation of the Chapter 11 reorganization plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss is not necessary. The Finance Office will close out the estimated loss or final loss at the time of notification of payment in full.

(iv) A report of loss will be completed to compensate the lender for any excess in interest rate specified in the Loan Note Guarantee and the rate of interest specified in the plan.

(3) Final loss payments Final loss payments will be processed when the loan is liquidated.

(4) Payment application The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. In the event a bankruptcy court attempts to direct the payments to be applied in a different manner, the lender will immediately notify the Agency servicing office. The Agency will immediately obtain advice from the Office of the General Counsel (OGC) on what action to take.

(5) Overpayments Upon completion of the reorganization plan, the lender will provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. If the actual loss sustained as a result of the reorganization is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of payment of the estimated loss. If the actual loss is greater than the estimated loss payment, the lender will submit a revised estimated loss in order to obtain payment of the additional amount owed by the Agency to the lender. State Directors should carefully determine the amount of estimated loss payments to avoid litigation that may become necessary to recover overpayments from the lender.

§ 4287.170(b) (Con.)

(6) Protective advances If approved protective advances were made prior to the borrower having filed bankruptcy, these protective advances and accrued interest will be considered in the loss calculations.

(c) Legal expenses during bankruptcy proceedings

(1) When a bankruptcy proceeding results in a liquidation of the borrower by a trustee, legal expenses will be handled as directed by the court.

(2) Chapter 11 generally pertains to a reorganization of a business contemplating an ongoing business rather than a termination and dissolution of the business where legal protection is afforded to the business as defined under Chapter 11 of the Bankruptcy Code. Consequently, expenses incurred by the lender in a Chapter 11 reorganization can never be liquidation expenses unless the proceeding becomes a Chapter 11 liquidation. If the proceeding should become a liquidating 11, reasonable and customary liquidation expenses may be deducted from proceeds of collateral as provided in the Lender's Agreement. Chapter 7 pertains to a liquidation of the borrower's assets. If, and when, liquidation of the borrower's assets under Chapter 7 is conducted by the bankruptcy trustee, then the lender cannot claim expenses.

(d) Agency monitoring. State Directors are responsible for seeing that the Agency is fully informed by the lender on all bankruptcy cases and monitoring the lender's files to ensure timely action on bankruptcy cases. The Agency may approve the repurchase of the unpaid guaranteed portion of the loan from the holders to reduce interest accrual during Chapter 7 proceedings or after a Chapter 11 proceeding becomes a liquidation proceeding. State Directors must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation bankruptcy.

§§ 4287.171 - 4287.179 [Reserved]

§ 4287.180 Termination of guarantee.

A guarantee under this part will terminate automatically:

- (a) upon full payment of the guaranteed loan;
- (b) upon full payment of any loss obligation; or

RD Instruction 4287-B
§ 4287.170 (Con.)

(c) upon written notice from the lender to the Agency that the guarantee will terminate 30 days after the date of notice, provided that the lender holds all of the guaranteed portion and the Loan Note Guarantee is returned to the Agency to be canceled. The Agency will notify the Finance Office that the Loan Note Guarantee has been terminated or the loan has been paid in full.

§§ 4287.181 - 4287.199 [Reserved]

§ 4287.200 OMB control number.

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575-0168. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 8 hours per response, with an average of 4 hours per response, including time for reviewing the collection of information. Send comments regarding this burden, estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Stop 7630, Washington, D.C. 20250. You are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Attachments: Appendices A and B.

oOo

MODIFICATION OR ADMINISTRATIVE ACTION

BORROWER INFORMATION:

Name and Address of Borrower: _____

Number of Employees and Annual Payroll: _____

History of Account: _____

LOAN INFORMATION:

Name and Address of Lender: (If different from lender holding guarantee, has the lender been substituted as outlined in § 4287.135 of this subpart?)

Date Loan Note Guarantee was issued: _____

Original Amount of the Loan: _____

Interest Rate and Terms: _____

Unpaid Balance:

Principal: \$ _____ Interest: \$ _____

Status: () Current () Delinquent () Liquidation

() Chapter 7 () Chapter 11 () Other (Specify) _____

Use of Loan Funds: _____

Market and liquidation value of collateral:

Collateral	Appraisal Date	Lien Position	Market Value	Liquidation Value
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____

Who owns the guaranteed portion? ☐ lender ☐ Agency ☐ holder

Has an estimated loss been paid? ☐ Amount paid and date: _____

FINANCIAL INFORMATION:

Credit quality review ratios and comments:

Current Ratio: _____ Industry Average: _____

Comments: _____

Equity: _____ Industry Average: _____

Comments: _____

Debt to Worth: _____ Industry Average: _____

Comments: _____

Working Capital: _____ Industry Average: _____

Comments: _____

Describe any loan covenant violations: _____

Is the cash flow adequate to satisfy current portion of long term debt? ☐

Financial condition of personal guarantors:

Dates of latest financial statements: _____

Net worth: \$ _____ Outside net worth: \$ _____

Comments on collectibility: _____

SERVICING REQUEST:

Nature of request: _____

State Office analysis of request: _____

Lender recommendation: _____

Comments on regional attorney's review (Attach copy of opinions): _____

Environmental review: Type: _____ *Adequacy:* _____
Comments: _____

State Director and Program Chief recommendations: _____

NOTE: For all modifications or administrative actions, the following information must be considered:

- 1. Start with number 1 when the first modification is approved and enter this number in the upper right hand corner of the Letter of Concurrence and related "Modification or Administrative Action" sheet.*
- 2. Next to the modified wording on the work copy of the Conditional Commitment for Guarantee and the Term Loan Agreement or any form which has been modified, pencil in a short cross reference to the modification and identify the number given it.*
- 3. File the copies of the "Modification or Administrative Action" sheet and related Letters of Concurrence numerically in the docket directly on top of the affected original documents of conditions.*
- 4. The order of recordingkeeping should include any requests which were declined by the National Office.*

oOo

**BUSINESS AND INDUSTRY GUARANTEED LOAN
FINAL LOSS SETTLEMENT CHECKLIST**

I. General Information:

Date _____ State _____

Name of Borrower _____

Case Number _____

Type of Project _____

Type Organization _____

Servicing Office _____

Original Loan Amount _____

Date of Loan _____

Loan Number _____

Repayment Period _____

Interest Rate _____

Fixed _____

* Variable _____

Daily Accrual 360 or 365 days _____

Percent of Guarantee _____

Subsequent Loan Amount _____

Date of Subsequent Loan _____

Repayment Period _____

Interest Rate _____

Fixed _____

* Variable _____

Daily Accrual 360 or 365 days _____

Percent of Guarantee _____

Type of Security:

GO Bond _____

Revenue Bond _____

Real Estate _____

Machinery and Equipment _____

Accounts Receivable _____

Inventory _____

Furniture and Fixtures _____

Personal Guarantee _____

Other _____

Name of Lender _____

Percent of Loan Held by Lender _____

RD Instruction 4287-B
Appendix B
Page 2

Name of Holder _____

Percent of Loan Held by Holder _____

Amount of Holder's interest repurchased by Lender _____

Percent of Holder's interest repurchased by Lender _____

Amount of Holder's interest repurchased by Agency _____

Percent of Holder's interest repurchased by Agency _____

* List below the dates and interest rate changes for variable rate loans
from the date the loan was last current through the settlement date.

Exact Date of Rate change	Interest Rate	Guaranteed Note	Unguaranteed Note
------------------------------	------------------	--------------------	----------------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

II. Collateral for the Loan:

Appr. Value at Date of Loan Approval	Date of Appraisal	Appr. Value at Liquidation	Date of Appraisal
---	-------------------	----------------------------	-------------------

Current Market or Liquidation _____

Land-Buildings _____

Machinery and
Equipment _____

Accounts
Receivable _____

Inventory _____

Furniture and
Fixtures _____

Other _____

III. Loan Balance at Liquidation

Date Liquidation Plan Submitted _____

Date of Liquidation Plan _____

Effective Date of Liquidation _____

Principal Balance at Liquidation _____

Interest Balance at Liquidation _____

Total Balance at Liquidation _____

Daily Interest Accrual _____

IV. LIQUIDATION COSTS:

Phase I Assessment Cost _____

Phase II Assessment Cost _____

Legal Fees _____

Sheriff's Cost _____

Taxes Due and Paid _____

Auction Cost _____

Broker Cost _____

Other fees (identify below): _____

Total Liquidation Expenses _____

Appraisal Fees _____

Date Appraisal Fees Paid _____

Protective Advances _____

Dates Protective Advances Paid _____ (1) _____

(2) _____

V. USE OF LIQUIDATION PROCEEDS:

Net Proceeds Applied to Guaranteed Loan _____

Proceeds Applied to Liquidation Expenses _____

Other Applications (identify) _____

VI. SOURCE OF LIQUIDATION PROCEEDS:

Sale Proceeds Received _____

Land-Building _____

Machinery and Equipment _____

Furniture and Fixtures _____

Inventory _____

Other (identify) _____

Collection on Personal Guarantee _____

VII. Summary (circle the proper answer)

NOTE: All questions answered with "NO" must be explained and fully documented to support the reason for the "NO" answer.

- 1. (YES - NO - NA) Did the borrower comply with all applicable laws and provisions of the Loan Agreement?*
- 2. (YES - NO - NA) Were copies of the borrower's financial statements submitted to the Agency as required by the Lender's Agreement?*
- 3. (YES - NO - NA) Did the lender submit and follow a plan of liquidation?*
- 4. (YES - NO - NA) Did the Agency approve, in writing, the lender's plan of liquidation and any subsequent revision?*
- 5. (YES - NO - NA) Is documentation for justification and authorization of all liquidation expenses and protective advances attached?*
- 6. (YES - NO - NA) Was a determination made that the lender did not charge for "in house" fees in connection with the liquidation?*
- 7. (YES - NO - NA) Did the Agency approve protective advances in writing?*

8. (YES - NO - NA) *Were all liquidation appraisal fees shared equally between the lender and the Agency?*
9. (YES - NO - NA) *Did the lender obtain the proper security and lien position at loan closing?*
10. (YES - NO - NA) *Did the lender maintain proper liens and security instruments on security?*
11. (YES - NO - NA) *Was adequate insurance coverage as required by the Conditional Commitment maintained at all times?*
12. (YES - NO - NA) *Was all collateral disposed of and accounted for?*
13. (YES - NO - NA) *Has a list of all unaccounted for security been provided and has the value been taken into account for the final loss settlement amount?*
14. (YES - NO - NA) *Have all proceeds been accounted for from the sale of collateral?*
15. (YES - NO - NA) *Have all liquidation costs been deducted from the sale proceeds?*
16. (YES - NO - NA) *If the lender had other loans with the borrower, did the lender apply proceeds to the appropriate loans?*
17. (YES - NO - NA) *Have lender payment records been reviewed to determine that payments were applied correctly and interest was properly accrued and posted to the borrower's account?*
18. (YES - NO - NA) *Has a determination been made whether to pursue the personal guarantee, if one was taken, and is a deficiency judgment warranted?*
19. (YES - NO - NA) *Have all personal guarantees been accounted for and are the lender's actions documented?*
20. (YES - NO - NA) *Have required signatures been obtained on Form RD 449-30, "Loan Note Guarantee Report of Loss"?*

21. (YES - NO - NA) *Has the settlement date been agreed to by the lender and the Agency and is it entered on Form RD 449-30?*
22. (YES - NO - NA) *Has the proper report code been entered on Form RD 449-30?*
23. (YES - NO - NA) *Have interest computations been verified?*
24. (YES - NO - NA) *Is there additional interest to be paid to the check date?*
25. (YES - NO - NA) *If payment is to be wired to the lender, has the lender's routing information been provided?*
26. (YES - NO - NA) *Has the Office of Inspector General and the Office of the General Counsel approved payment where applicable?*
27. (YES - NO - NA) *Was the loan properly closed in accordance with the Conditional Commitment?*
28. (YES - NO - NA) *Were loan funds used for authorized purposes?*
29. (YES - NO - NA) *If loan funds were not used for authorized purposes, has the unauthorized use of funds been taken into consideration?*
30. (YES - NO - NA) *If a future recovery possibility exists, has the Agency set up a monitoring system to followup with the lender?*
31. (YES - NO - NA) *Have overpayments of estimated loss requests been taken into consideration?*
32. (YES - NO - NA) *If the Agency has a receivable, has the lender remitted to the Agency its pro rata share of funds?*
33. (YES - NO - NA) *Has pro rata application of funds been made to the guaranteed or unguaranteed loan?*

DATE _____ AGENCY APPROVAL OFFICIAL _____

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL BUSINESS-COOPERATIVE SERVICE

APPLICATION FOR LOAN GUARANTEE
(Business and Industry)

Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years or both."

CERTIFICATION: Information contained below and in attached exhibits is true and complete to my best knowledge. (Misrepresentation of material facts may be the basis for denial of credit by the United States Department of Agriculture ("USDA").)

PART A: Completed By Borrower

1. AMOUNT OF LOAN \$		2. NAME OF BORROWER		3. ADDRESS (Include Zip Code)	
4. CONTACT PERSON		5. TELEPHONE NUMBER (Include Area Code) ()		6. TAX ID# OR SOCIAL SECURITY # FOR INDIVIDUALS	
7. PROJECT LOCATION (Town/City)		8. POPULATION	9. COUNTY	10. TYPE OF BORROWER <input type="checkbox"/> Proprietorship <input type="checkbox"/> Cooperative <input type="checkbox"/> Partnership <input type="checkbox"/> Indian Tribe <input type="checkbox"/> Corporation <input type="checkbox"/> Political Subdivision	11. SIC CODE
12. DATE BUSINESS ESTABLISHED		13. FRANCHISE <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, attach copy of franchise agreement)		16. HAS BORROWER OR RELATED INDIVIDUAL EVER BEEN IN RECEIVERSHIP OR BANKRUPTCY <input type="checkbox"/> Yes <input type="checkbox"/> No	
14. a. THIS PROJECT IS <input type="checkbox"/> An expansion <input type="checkbox"/> New Business <input type="checkbox"/> Refinancing <input type="checkbox"/> Transfer of ownership <input type="checkbox"/> Other b. JOBS: Created _____ Saved _____		15. IF BORROWER IS AN INDIVIDUAL (Item 10 checked proprietorship) A. IS HE OR SHE A VETERAN? <input type="checkbox"/> YES <input type="checkbox"/> NO B. MARITAL STATUS - <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Unmarried			

17. SCHEDULE OF INSTALLMENT DEBTS, CONTRACTS, NOTES AND MORTGAGES PAYABLE CORRELATED TO LATEST BALANCE SHEET DATED _____, INDICATE WITH ASTERISK (*) DEBTS TO BE REPAID WITH PROPOSED USDA GUARANTEED LOAN IF APPLICABLE. (* Attach additional sheet if necessary.)

CREDITOR	ORIGINAL LOAN AMOUNT	LOAN BALANCE	DATE OF LOAN	INTEREST RATE	MATURITY DATE	M - MONTHLY Q - QUARTERLY A - ANNUAL PAY	CURRENT? Y = YES N = NO	SECURITY

18. For Existing Businesses Only - Aging of accounts receivable, correlated to latest balance sheet dated _____, typical selling terms are:
☐ 30 Days or Less, ☐ 60 Days or Less, ☐ 90 Days or Less, ☐ Other (Specify) _____
30 Days or Less \$ _____ 61 to 90 Days ... \$ _____
31 Days to 60 Days \$ _____ Over 90 Days ... \$ _____

19. PROFESSIONAL SERVICE FEES FOR ENGINEERS, ARCHITECTS, LAWYERS, ACCOUNTANTS, LOAN PACKAGERS, APPRAISERS, PROVIDED IN THE PREPARATION OF THIS APPLICATION (SUBJECT TO USDA APPROVAL)

NAME	SERVICE	FEE/COMPENSATION	SOURCE OF FUNDING

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0170. The time required to complete this information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

20. PROVIDE INFORMATION BELOW ON KEY PEOPLE (PROPRIETOR, PARTNERS, OFFICERS, DIRECTORS, KEY EMPLOYEES AND STOCKHOLDERS WITH 20% OR MORE INTEREST IN THE BUSINESS). ALSO INCLUDE PERSONS OR CORPORATIONS THAT WILL GUARANTEE LOAN. (* Optional, used for monitoring purposes only.)

NAME AND POSITION	RACE *	SEX *	U.S. CITIZEN YES OR NO	ANNUAL COMPENSATION	% OF OWNERSHIP	OUTSIDE NET WORTH	PERSONAL/ CORPORATE GUARANTEE: YES OR NO

ATTACH THE FOLLOWING IF NOT ALREADY SUBMITTED:

- ☐ 21. ATTACH BUSINESS PLAN that should as a minimum include description of business or project, management experience, products or services, proposed use of funds, community benefits, type and number of jobs, availability of labor or raw materials or supplies, names of any corporate parents, affiliates, subsidiaries and describe relationship including products, ownership between borrower, parent, affiliates, etc.
- ☐ 22. "Certification of Non-Relocation and Market Capacity Information Report," Form 4279-2.
- ☐ 23. State Clearinghouse comments or recommendations.
- ☐ 24. For companies listed on major stock exchanges and or subject to the Securities and Exchange Commission regulations, a copy of Form 10-K, "Annual Report Pursuant to Section 13 or 15D of the Act of 1934."
- ☐ 25. "Request for Environmental Information," Form FmHA 1940-20, and attachments. (If applicable)
- ☐ 26. Independent Feasibility Study. (If applicable, see RBS Instruction 4279-B, Exhibit A)
- ☐ 27. Architectural or Engineering Plans. (If applicable)
- ☐ 28. Cost estimates and forecasts of contingency funds to cover cost increases or project changes.
- ☐ 29. Financial Statements a) At least 3 years historical income statements and balance sheets (if an existing business), including parent, affiliate and subsidiary firms. Annual Audits if available. b) Current (not more than 90 days old) balance sheet and profit and loss statement (if an existing business), c) Pro-forma balance sheet (at startup), d) 2 years of projections: income statements, balance sheets and cash flow statements supported by a list of assumptions (monthly first year, quarterly for 2nd year).
- ☐ 30. Record of any pending or final regulatory or legal (civil or criminal) action against the business, parent, affiliate, proposal guarantors, subsidiaries, principal stockholders, officers and directors.
- ☐ 31. If a health care facility, a "Certificate of Need" (if required by state law).
- ☐ 32. Current personal (not more than 60 days old) and corporate (not more than 90 days old) financial statements on guarantors in Item 20, above.

By my signature, I certify that I have read the General Borrower Certifications contained in this application. My signature represents my agreement to comply with the limitations outlined in the General Borrower Certifications.

CORPORATE SEAL

ATTEST _____

TITLE _____

BORROWER SIGNATURE

BY _____

TITLE _____

DATE _____

GENERAL BORROWER CERTIFICATIONS

(1) ASSURANCE AGREEMENT (TITLE VI, CIVIL RIGHTS ACT OF 1964)

“Recipient” herein hereby assures the U. S. Department of Agriculture (USDA) that Recipient is in compliance with and will continue to comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.), 7 C.F.R. part 15, and USDA regulations promulgated hereunder, 7 C.F.R. §1901.202 of subpart E of part 1901. In accordance with that Act and the regulations referred to above, Recipient agrees that in connection with any program or activity for which Recipient receives Federal financial assistance (as such term is defined in 7 C.F.R. §14.2) no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination.

A. Recipient agrees that any transfer of any aided facility, other than personal property, by sale, lease or other conveyance of contract, shall be, and shall be made expressly, subject to the obligations of this agreement and transferee’s assumption thereof.

B. Recipient shall:

- (1) Keep such records and submit to the Government such timely, complete, and accurate information as the Government may determine to be necessary to ascertain compliance with this agreement and the regulations.
- (2) Permit access by authorized employees of the USDA during normal business hours to such books, records, accounts and other sources of information and its facilities as may be pertinent to ascertaining such compliance.
- (3) Make available to users, participants, beneficiaries and other interested persons such information regarding the provisions of this agreement and the regulations, and in such manner as the USDA finds necessary to inform such persons of the protection assured them against discrimination.

C. The obligations of this agreement shall continue:

- (1) As to any real property, including any structure, acquired or improved with the aid of the Federal financial assistance, so long as such real property is used for the purpose for which the Federal financial assistance is made or for another purpose which affords similar services or benefits, or for as long as the Recipient retains ownership or possession of the property, whichever is longer.
- (2) As to any personal property acquired or improved with the aid of the Federal financial assistance, so long as Recipient retains ownership or possession of the property.
- (3) As to any other aided facility or activity, until the last advance of funds under the loan or grant has been made.

D. Upon any breach or violation of this agreement the Government may, at its option:

- (1) Terminate or refuse to render or continue financial assistance for the aid of the property, facility, project, service or activity.
- (2) Enforce this agreement by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the breach or violation occurs.

Rights and remedies provided for under this agreement shall be cumulative.

(2) EQUAL OPPORTUNITY AGREEMENT (EXECUTIVE ORDER 11246, AS AMENDED)

“Recipient” (whether one or more) and USDA, pursuant to the rules and regulations of the Secretary of Labor (“Secretary”) issued under the authority of Executive Order 11246, as amended, agree:

In consideration of financial assistance (whether by a loan, grant, loan guaranty, or other form of financial assistance) made or to be made by USDA to Recipient, Recipient hereby agrees, if the cash cost of construction work performed by Recipient or a construction contract financed with such financial assistance exceeds \$10,000—unless exempted by rules, regulations or orders of the Secretary issued pursuant to section 204 of Executive Order 11246.

A. To incorporate or cause to be incorporated into any contract for construction work, or modification thereof, subject to the relevant rules, regulations, and orders of the Secretary or of any prior authority that remain in effect, which is paid for in whole or in part with the aid of such financial assistance, the following “Equal Opportunity Clause”:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited, to the following: employment, upgrading demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by USDA setting forth the provisions of this nondiscrimination clause.
 - (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
 - (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by USDA, advising the said labor union or workers' representative of the contractor's commitments under this agreement as required pursuant to section 202(3) of Executive Order 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (4) The contractor will comply with all provisions of Executive Order 11246, and of all rules, regulations and relevant orders of the Secretary of Labor and of any prior authority which remain in effect.
 - (5) The contractor will furnish all information and reports required by Executive Order 11246, rules, regulations, and orders, or pursuant thereto, and will permit access to the contractor's books, records, and accounts by USDA, Office of Civil Rights, and the Secretary for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - (6) In the event of the contractor's noncompliance with the Equal Opportunity (Federally Assisted Construction) clause or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government Contracts or Federally Assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246, or by rule, regulation or order of the Secretary, or as provided by law.
 - (7) The contractor will include the provisions of this Equal Opportunity (Federally Assisted Construction) clause in every subcontract or purchase order, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 204 of Executive Order No. 11246, so that such provisions will be binding upon each such subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order USDA may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by USDA, the contractor may request the United States to enter into such litigation to protect the interest of the United States.
- B. To be bound by the provisions of the-Equal Opportunity Clause in construction work performed by Recipient and paid for in whole or in part with the aid of such financial assistance.
- C. To notify all prospective contractors to file the required 'Compliance Statement', Form FmHA 400-6, with their bids.
- D. Form AD-425, Instructions to Contractors, will accompany the notice of award of the contract. Bid conditions for all nonexempt Federal and Federally assisted construction contracts require inclusion of the appropriate "Hometown" or "Imposed" plan affirmative action and equal employment opportunity requirements. All bidders must comply with the bid conditions contained in the invitation to be considered responsible bidders and hence eligible for the award.
- E. To assist and cooperate actively with USDA and the Secretary in obtaining the compliance of contractors and subcontractors with the provisions of the Equal Opportunity Clause and the said rules, regulations, and orders, to obtain and furnish to USDA and the Secretary, Form AD-560, "Certification of Nonsegregated Facilities", to submit the Monthly Employment Utilization Report, Form CC-257, as required and such other information as may be required for the supervision of such compliance, and to otherwise assist USDA in the discharge of its primary responsibility for securing compliance.

- F. To refrain from entering into any contract, or extension or other modification of a contract, subject to such Executive Order with a contractor debarred from Government contracts or federally assisted construction contracts pursuant to part 11, subpart D, of such Executive Order or to prior authority; and to carry out such sanctions and penalties for violation of the provisions of the Equal Opportunity Clause as may be imposed upon contractors and subcontractors by USDA or the Secretary pursuant to such subpart D.
- G. That if Recipient fails or refuses to comply with these undertakings, USDA may take any or all of the following actions: (a) cancel, terminate, or suspend said financial assistance in whole or in part; (b) refrain from extending any further assistance under the program involved until satisfactory assurance of future compliance has been received from Recipient; and (c) refer the case to the USDA Office of Civil Rights Enforcement and Adjudications Program Complaint and Adjudication Division, U. S. Department of Agriculture for appropriate action.

(3) FEDERAL COLLECTION POLICIES FOR CONSUMER OR COMMERCIAL DEBTS

The Federal Government is authorized by law to take any and all actions in the event your loan payments become delinquent or you default on your loan:

- Report your name and account information to a credit reporting agency.
- Assess interest and penalty charges for the period of time that payment is not made.
- Assess charges to cover additional administrative costs incurred by the government to service your account.
- Offset amounts to be paid to you under other Federal programs.
- Refer your account to a private collection agency to collect the amount due.
- Foreclosure on any security you have given for the loan.
- Pursue legal action to collect through the courts.
- Report any written off debt to the Internal Revenue Service as taxable income.
- If you are a current or retired Federal employee, take action to offset your salary, or civil service retirement benefits.
- Debar or suspend you from doing business with the Federal Government either as a participant or principal throughout the Executive Branch of the Federal Government for a period of debarment or suspension.

(4) STATEMENT REQUIRED BY THE PRIVACY ACT

USDA is authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) or other Acts administered by USDA to solicit the information requested on RDA application forms.

Disclosure of information requested is voluntary. However, failure to disclose certain items of information requested including your Social Security Account or Federal Identification Number may result in a delay in the processing of an application or its rejection.

The principal purposes for collecting the requested information are to determine eligibility for USDA credit or other financial assistance, the need for interest credit or other servicing actions, for the servicing of your loan, and for statistical analysis. Information provided may be used outside of USDA for the following purposes:

- To provide the basis for borrower success stories in USDA news releases.
- Referral to the appropriate law enforcement agency as required by 40 FR, 38924 (1975).
- Referral to employees, businesses, landlords, creditors or others to determine repayment ability and eligibility for USDA programs.
- Referral to a contractor providing services to USDA in connection with your loan.

- Referral to a credit reporting agency.
- Referral to a person or organization when USDA decides such referral is appropriate to assist in the collection or servicing of the loans
- Referral to a Federal Records Center for storage.

Every effort will be made to protect the privacy of applicants and borrowers.

WARNING

All information supplied to USDA by you or your agents in connection with your loan application may be released to interested third parties, including competitors, without your knowledge or consent under the provision of the Freedom of Information Act (5 U.S.C. 522).

Much information not clearly marked "Confidential" may routinely be released if a request is received for same. Further, if we receive a request for information marked "Confidential," the Federal Government will release the information unless you can demonstrate to our satisfaction that release of the information would be likely to produce substantial competitive harm to your business or would constitute a clearly unwarranted invasion of personal privacy. Also, forms, consultant reports, etc., cannot be considered confidential in their entirety if confidential material contained therein can reasonably be segregated from other information.

Information submitted may be made available to the public during the time it is held in Government files regardless of the action taken by USDA on your application.

FEDERAL EQUAL CREDIT OPPORTUNITY ACT STATEMENT

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe that you have been discriminated against for any of these reasons, you can write the Secretary of Agriculture, Washington, D.C. 20250. You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, D.C. 20580.

PART B: Completed By Lender

1. NAME OF LENDER		2. ADDRESS (Include Zip Code)	
3. LENDER TAX ID NUMBER	4. CONTACT PERSON	5. TELEPHONE NUMBER (Include Area Code) ()	
6. IS LOAN WITHIN LENDER'S LEGAL LENDING LIMIT? <input type="checkbox"/> Yes <input type="checkbox"/> No	7. GUARANTEE PERCENT REQUESTED? _____ %	8. WHY IS GUARANTEE NEEDED? _____	
9. LIST ANY OFFICER, DIRECTOR, STOCKHOLDER OR EMPLOYEE WHO HAS A FINANCIAL INTEREST IN THE BORROWER, OR VICE VERSA, AND DESCRIBE THE RELATIONSHIP AND INTEREST:			
10. LIST ALL FEES LENDER WILL CHARGE FOR THE LOAN, INCLUDING THE USDA GUARANTEE FEE:			

11. LENDER'S SERVICING PLAN (FIELD INSPECTIONS, INTERIM STATEMENTS, ANNUAL AUDITS, CREDIT ANALYSIS, ETC.):

12. LIST ANY OTHER USDA GUARANTEED BUSINESS AND INDUSTRY LOANS MADE BY LENDER:				
Borrower Name	Program Type	Total Loan Amount	Guaranteed Loan Amount	Closing Date

13. PROPOSED KEY EMPLOYEE LIFE INSURANCE, EMPLOYEE NAMES AND AMOUNTS	
	Assigned to Guaranteed Loan?
	Assigned to Guaranteed Loan?

14. COLLATERAL AVAILABLE FOR THE USDA GUARANTEED LOAN:					
Presently Owned or to be Acquired	Value	Value Type	Discount Factor	Prior Liens *	Net Collateral Value
Accounts Receivable					
Inventory					
Office Furniture and Equipment					
Automotive Equipment					
Machinery and Equipment					
Building					
Land					
Other:					
TOTALS					

* Indicate by asterisk liens to be paid off with USDA guaranteed loan funds

15.	Project Purpose and Funding	Borrower Contribution	USDA Guaranteed Loan	Other Funds	Total
	Working Capital				
	Office Furniture and Equipment				
	Automotive Equipment				
	Machinery and Equipment				
	Real Estate				
	Debt Restructuring				
	Fees: Professional, USDA Guarantee				
	Other				
	TOTAL				

16.	Proposed Financing	Loan Amount	Interest Rate "V" = variable	Base Rate As of Today	Interest Rate Tied To	Days Interest Computed On	Term "Y"- "Mo"	Monthly Payments
	TOTAL							

17.	Tangible book equity Cannot include appraisal surplus or subordinated debt. * May include Proprietorship, Partnership, or other forms of Net Worth.		When Loan Note Guarantee Is Issued:
		Common Stock	\$
		Preferred Stock	\$
		Retained Earnings	\$
		Capital Surplus	\$
		Other*	\$
		TOTAL	\$

ATTACH THE FOLLOWING IF NOT ALREADY SUBMITTED:

- ☐ 18. Intergovernmental Review Clearance (*If applicable*).
- ☐ 19. Credit reports on the borrower, its principles, and any parent, affiliate or subsidiary firms
- ☐ 20. Proposed term Loan Agreement between lender and borrower (*See subpart B to part 4279, section 7 C.F.R. 4279.161(B)(11) for minimum requirements*).
- ☐ 21. Appraisal reports (*Submit as soon as available*).
- ☐ 22. Lender's analysis including: spreadsheets of the balance sheets and income statements for 3 years historical, proforma balance sheet at start up, 2 years projected yearend balance sheets and income statements with appropriate ratios and comparison with industrial standards (such as D&B, RMA). All data must be shown in total dollars and also in common size form, obtained by expressing all balance sheet items as a percentage of assets, and all income and expenses as a percentage of sales. The lender's credit analysis must address the borrower's management, repayment ability, history of debt repayment, necessity for any debt refinancing, and the credit reports on the borrower, its principals, and any parent, affiliate or subsidiary firms.

GENERAL LENDER CERTIFICATION

Lender certifies that it has reviewed the General Lender Certifications contained in this application. Lender's signature represents the lending institution's agreement to comply with the limitations outlined in the General Lender Certifications.

Lender certifies that it meets all criteria to be considered as an eligible Lender.

Lender certifies that it has completed a comprehensive analysis of the proposal, the proposed borrower is eligible, the loan is for authorized purposes, and there is reasonable assurance of repayment ability based on the proposed borrower's history, projections, equity, and the collateral to be obtained.

Lender's Name

Date

By:_____
Officer Signature

Officer Title

GENERAL LENDER CERTIFICATIONS

LENDER _____

(1) RESTRICTIONS AND DISCLOSURE OF LOBBYING ACTIVITIES

If any funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure of Lobbying Activities," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by §1352 Title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(2) CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12649, Debarment and Suspension, 7 C.F.R. §3017.510, Participants' responsibilities. The regulations were published as part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," and "voluntarily excluded," as used in this clause, have the meanings set out in Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into a lower tier covered transaction with a person who is debarred, suspended, ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tiered Transactions, provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph 5 of this section, if a participant in a covered transaction knowingly enters into a

lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate this transaction for cause or default.

(A) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (2) have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal, or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;
- (3) are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph A.2. of this certification; and
- (4) have not within a three-year period preceding this application or proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(B) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Position 3
PROJECT SUMMARY
(Business & Industry)

PRIORITY SCORE _____
POINTS _____

The "Application For Loan Guarantee (Business & Industry)" is an integral part of this Project Summary

PART C: Completed By USDA

1. BORROWER		2. CASE NUMBER	3. TYPE OF ASSISTANCE <input type="checkbox"/> Initial Loan <input type="checkbox"/> Subsequent Loan
4. CONGRESSIONAL DISTRICT BORROWER _____ LENDER _____	5. LENDER	6. PERCENTAGE OF GUARANTEE RECOMMENDED: _____ %	
7. RURAL AREA <input type="checkbox"/> Yes <input type="checkbox"/> No <i>(Attach National Office documentation if necessary)</i>	8. CITIZENSHIP <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other* * (Explain if other)		
9. DEPT. OF LABOR CLEARANCE <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable	10. LOAN TO JOB RATIO: (Loan ÷ No Jobs) \$ _____ per job		

A TYPED CREDIT ANALYSIS THAT INCLUDES DISCUSSIONS OF THE ISSUES INDICATED ON ITEMS 11 THROUGH 21 MAY BE ATTACHED IN LIEU OF COMPLETING THESE ITEMS.

11. DISCUSS MANAGEMENT'S ABILITY, EXPERIENCE AND EDUCATION:

12. DISCUSS COMMUNITY IMPACT OF PROJECT, MAINTAINING OR INCREASING EMPLOYMENT, AREA, ECONOMICS, ENHANCING ENVIRONMENT, ETC.:

13. DISCUSS ADEQUACY OF LENDER'S SPREADSHEET AND ANALYSIS:

14. DISCUSS REALISM OF FINANCIAL PROJECTIONS:

15. DISCUSS FEASIBILITY STUDY (IF APPLICABLE) OR BUSINESS PLAN:

16. DISCUSS COLLATERAL:

17. DISCUSS EQUITY:

18. DISCUSS SITE VISIT:

19. DISCUSS BORROWER REPAYMENT ABILITY, COVERAGE, CREDIT REPORTS, ETC.:

20. DISCUSS STRENGTHS AND WEAKNESSES OF PROJECT:

A) Strengths:

B) Weaknesses:

21. DISCUSS ADEQUACY OF LENDER'S SERVICING PLANS AND ABILITY:

22. NATIONAL OFFICE CONCURRENCE:
REQUIRED? ☐ Yes ☐ No

23. STATE ALLOCATION ADEQUATE TO FUND LOAN
☐ Yes ☐ No (If no, explain)

24. RECOMMENDATIONS:

PREPARED BY:

DATE:

*USDA's Business and
Industry Loan
Guarantee program
allows lenders,
entrepreneurs and the
federal government to
work together to
promote economic
opportunity and
community development
in rural America.*

